No. 06-341

Supreme Court, U.S.
FILED
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In the Supreme Court of the United States

BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES,
Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

Supreme Court, U.S.
FILED
FEB 20 2007
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JOINT APPENDIX

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Date Filed	#	Docket Text
12/30/2002	1	COMPLAINT for civil rights w/jury demand (0 Summons(es) issued) (referred to Magistrate Judge Lorenzo F. Garcia) (ed) (Entered: 12/31/2002)
03/19/2003	3	ANSWER by defendant BCI Coca-Cola [1-1]; jury demand (mlk) (Entered: 03/20/2003)
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03/19/2004	74	APPENDIX filed by plaintiff re response [73-1] (sl) Modified on 03/22/2004 (Entered: 03/19/2004)
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United States Court of Appeals for the 10th Circuit
Court of Appeals Docket #: 04-2220

Date Filed	Docket Text
5/12/05	[1807750] Appellee's brief filed by BCI Coca-Cola.
6/9/2005	[1815750] Appellant's reply brief filed by Equal Employment.
11/14/2005	[1862710] Case argued by Susan R. Oxford, for appellant and by E. Todd Presnell for appellee; Submitted to Judge Lucero, McKay, McConnell. (ss)
6/7/2006	[1925085] Terminated on the Merits after Oral Hearing; Judgment is Reversed and case is Remanded; Written, Signed, Published. Lucero; McKay; McConnell, authoring judge. [04-2220] Parties served by mail on 6/7/06.
7/31/2006	[1941294] Mandate issued.
9/12/2006	[1955062] Petition for writ of certiorari filed on 9/5/06. Supreme Court Number 06-341.
1/11/07	[1991527] Supreme Court order dated 1/5/07 granting certiorari filed.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Civ-02-1644

[Filed December 30, 2002]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,	)
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, d/b/a PHOENIX COCA-COLA BOTTLING COMPANY and COCA-COLA BOTTLING COMPANY OF ALBUQUERQUE, Defendant.	)

COMPLAINT
JURY TRIAL DEMANDED

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of race, and to provide appropriate relief to Charging Party Stephen Peters who was adversely affected by such practices. As alleged with greater particularity in paragraph seven below, BCI Coca-Cola Bottling Company of Los Angeles, which does business under the names of Phoenix Coca-Cola Bottling Company and Coca-Cola Bottling Company of Albuquerque ("Defendant"), subjected Stephen B. Peters to disparate

treatment in the terms, conditions, and privileges of employment because of his race, African American. The Commission also alleges that Defendant discharged Mr. Peters because of his race, African American.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343, and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(l) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981A.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of New Mexico.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant, BCI Coca-Cola Bottling Company of Los Angeles, a Delaware corporation, which does business under the trade names of Phoenix Coca-Cola Bottling Company and Coca-Cola Bottling Company of Albuquerque, has continuously been and is now doing business in the State of New Mexico and the City of Albuquerque, and has at all relevant times had at least fifteen employees.

5. At all relevant times, Defendant has continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, Stephen B. Peters filed a charge with the Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least October 1999, Defendant engaged in unlawful employment practices at its Albuquerque, New Mexico facility, in violation of Section 703(a) of Title VII, 42U.S.C. § 2000e-2(a). These practices include:

a. disparate treatment of Stephen B. Peters in the terms, conditions, and privileges of his employment, including, threatening Mr. Peters with harsh discipline for not working a scheduled day off, failing to apply progressive discipline policies to Mr. Peters, and applying different attendance standards to Mr. Peters because of his race, African American; and

b. discharging Stephen B. Peters because of his race, African American.

8. The effect of the practices complained of in paragraph seven above has been to deprive Stephen B. Peters of equal employment opportunities and otherwise adversely affect his status as an employee because of his race, African American.

9. The unlawful employment practices complained of in paragraph seven above were intentional.

10. The unlawful employment practices complained of in paragraph seven above were done with malice or with reckless indifference to the federally protected rights of Stephen B. Peters.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in any employment practice which discriminates on the basis of race.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for African Americans, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make whole Stephen B. Peters, by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to front-pay in lieu of reinstatement.

D. Order Defendant to make whole Stephen B. Peters, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph seven above, including, but not limited to, compensation for the financial losses to Mr. Peters related to early withdrawal from his 401K Plan, in amounts to be determined at trial.

E. Order Defendant to make whole Stephen B. Peters by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph seven above, including, but not limited to, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life, and other non-pecuniary losses, in amounts to be determined at trial.

F. Order Defendant to pay Stephen B. Peters punitive damages for its malicious and reckless conduct described in paragraph seven above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its Complaint.

DATED this 30th day of December, 2002.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
AT ALBUQUERQUE

Civ-02-1644

[Filed March 19, 2003]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,	)
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, d/b/a PHOENIX COCA-COLA BOTTLING COMPANY and COCA-COLA BOTTLING COMPANY OF ALBUQUERQUE, Defendant.	)

ANSWER

Defendant BCI Coca-Cola Bottling Company of Los Angeles ("BCI"), by and through counsel, hereby responds to the allegations of the plaintiff's complaint. BCI denies the plaintiff's description of the "Nature of the Action" as set forth in the complaint, and specifically denies that the charging party, Stephen B. Peters, was subjected to any adverse employment action, including termination, because of his race. In further response to the specific allegations of plaintiff's complaint, BCI states as follows:

JURISDICTION AND VENUE

1.-2. BCI admits that jurisdiction and venue are proper in this court as alleged in paragraphs one and two of the complaint. All remaining allegations in these paragraphs are denied.

PARTIES

3. BCI admits the allegations contained in paragraph three of the complaint.

4. BCI admits the allegations contained in paragraph four of the complaint.

5. BCI admits the allegations contained in paragraph five of the complaint.

STATEMENT OF CLAIMS

6. BCI admits the allegations contained in the first sentence of paragraph six. BCI denies the allegations contained in the second sentence of paragraph six of the complaint.

7. BCI denies the allegations contained in paragraph seven of the complaint, specifically including the allegations contained in subparagraphs (a) and (b) therein.

8. BCI denies the allegations contained in paragraph eight of the complaint.

9. BCI denies the allegations contained in paragraph nine of the complaint.

10. BCI denies the allegations contained in paragraph ten of the complaint.

PRAYER FOR RELIEF

11. BCI denies that the plaintiff or Stephen B. Peters is entitled to any recovery from it under any theory of recovery whatsoever, specifically including the relief sought in paragraphs (A) through (H) of the Prayer for Relief.

JURY TRIAL DEMAND

12. BCI joins the plaintiff in demanding a jury to try this cause of action.

AFFIRMATIVE DEFENSES

13. BCI affirmatively asserts that it did not subject Stephen B. Peters to any adverse employment action because of his race during his employment, and that any such allegation is barred by the applicable statute of limitations.

14. BCI affirmatively asserts that the plaintiffs claims are barred because Stephen B. Peters failed to exhaust his administrative remedies with respect to the non-discharge employment allegations of the complaint.

15. BCI affirmatively asserts that the plaintiff's claims are barred, in whole or in part, by Stephen B. Peters' failure to mitigate damages, if any.

16. BCI affirmatively asserts that the plaintiff's claims are barred, in whole or in part, by the improper and/or unsatisfactory conduct of Stephen B. Peters.

17. BCI affirmatively asserts that the plaintiff's complaint fails to set forth facts sufficient to state a claim upon which relief may be granted.

18. BCI affirmatively asserts that the plaintiff's claims are barred, in whole or in part, by the doctrine of laches, unclean hands, estoppel, and/or waiver.

19. BCI affirmatively asserts that its conduct was not a proximate cause or a cause in fact of Stephen B. Peters' alleged injuries.

20. BCI affirmatively asserts that it never authorized, ratified, or participated in any unlawful conduct involving Stephen B. Peters.

21. BCI affirmatively asserts that, to the extent that the plaintiff is able to prove that any improper motive was a factor in any relevant employment decision made by BCI with respect to Stephen B. Peters, BCI would have made the same employment decisions regarding Stephen B. Peters regardless of any alleged improper motive.

22. BCI affirmatively asserts that, to the extent the plaintiff is able to prove that Stephen B. Peters was subjected to unlawful employment decisions of one or more of BCI's managerial agents, such decision was contrary to BCI's good faith efforts to comply with applicable statutes and regulations, such that the plaintiff is not entitled to punitive damages.

23. BCI affirmatively asserts that neither it nor its attorneys has had the opportunity to fully investigate or participate in discovery and, as such, BCI reserves the right to amend this answer or include in any pretrial order such

further affirmative defenses that may be applicable following completion of its investigation and discovery.

/s/ _____

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Civ-02-1644
JOB/RHS (ACE)

[Filed February 19, 2004]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,	)
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, d/b/a PHOENIX COCA-COLA BOTTLING COMPANY and COCA-COLA BOTTLING COMPANY OF ALBUQUERQUE, Defendant.	)

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT[1]

Defendant BCI Coca-Cola Bottling Company of Los Angeles hereby respectfully asks the Court to grant summary judgment in its favor, dismissing all Plaintiff's claims with prejudice, with costs of this action taxed to Plaintiff. As grounds' Defendant submits that Plaintiff cannot establish that Defendant intentionally discriminated against Stephen Peters based on his race. Alternatively, Defendant asks the Court to

[1] Defendant has verified with Plaintiff's counsel that Plaintiff will oppose this Motion.

dismiss Plaintiff's claims for inappropriately broad injunctive relief. In support hereof, Defendant relies upon the Pleadings, the Memorandum of Law filed contemporaneously herewith, as well as the following materials, attached as exhibits hereto: the Declaration of Patricia Edgar, and exhibits thereto (**Exhibit A** hereto); the Declaration of Cesar Grado, and exhibits thereto (**Exhibit B** hereto); the Declaration of Sherry Pedersen, and exhibits thereto (**Exhibit C** hereto); excerpts from the deposition of Geraldine Herrera (**Exhibit D** hereto); excerpts from the deposition of Stephen Peters (**Exhibit E** hereto); excerpts from the deposition of Patricia Edgar (**Exhibit F** hereto); excerpts from the deposition of Sherry Pedersen (**Exhibit G** hereto); excerpts from the deposition of Cesar Grado (**Exhibit H** hereto); and, excerpts from the deposition of Jeff Katt (**Exhibit I** hereto).

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Civ-02-1644
JOB/RHS (ACE)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,	)
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, d/b/a PHOENIX COCA-COLA BOTTLING COMPANY and COCA-COLA BOTTLING COMPANY OF ALBUQUERQUE, Defendant.	)

DECLARATION OF PATRICIA K. EDGAR

1. I am Patricia K. Edgar. I am currently employed by BCI Coca-Cola Bottling Company of Los Angeles ("BCI") as Human Resources Manager. In September and October of 2001, I held the position of Employee Relations Manager. At that time I was based in Phoenix, Arizona, but had authority over human resources functions at several BCI facilities in multiple states, including BCI's Albuquerque, New Mexico facility. Sherry Pedersen, who at the time was the Human Resources Administrator at the Albuquerque facility, reported directly to me. I am over 18 years of age and otherwise competent to give testimony in this matter. The statements

contained in this Declaration are based on personal knowledge.

2. The defendant is BCI Coca-Cola Bottling Company of Los Angeles, a Delaware corporation that does business in Albuquerque as The Coca-Cola Bottling Company of Albuquerque. BCI is a wholly owned subsidiary of Coca-Cola Enterprises Inc., which is the world's largest bottler of Coca-Cola® products. Coca-Cola Enterprises Inc. (CCE), and thus BCI, is not The Coca-Cola Company. Rather' CCE is an independent, public company traded on the New York Stock Exchange. It is the largest producer and distributor of products, such as Coca-Cola Classic®, Diet Coke®, and Dasani,® manufactured under a license agreement from The Coca-Cola Company. The Coca-Cola Company does not make Coke. It makes the Coke syrup. CCE, BCI, and other bottlers are the companies that produce and sell the actual finished beverages.

3. As Employee Relations Manager, I had authority to make decisions regarding discipline of BCI employees. The Human Resources personnel working under my supervision also had authority to make decisions regarding discipline and used their discretion in bringing such matters to my attention. However, *all* terminations had to be authorized by me. Occasionally, managers and supervisors would contact me directly regarding non-termination employee discipline issues.

4. On Friday, September 28, 2001, I received a call from Cesar Grado regarding a situation with one of his Merchandisers. Mr. Grado informed me that he just found out from one of his Account Managers that a Merchandiser, Stephen Peters, was probably going to refuse to come in to work on Sunday, September 30, 2001. Mr. Grado told me that this was one of Mr. Peters scheduled days off, but that he

needed Mr. Peters to come in on his day off due to a high-volume work situation. Mr. Grado told me Mr. Peters had previously resisted working on his scheduled days off and that he was anticipating problems in dealing with Mr. Peters on this issue. He asked me if he could require Mr. Peters to come in on his day off.

5. I explained to Mr. Grado that he could require Mr. Peters to come in on his day off. However, I asked Mr. Grado if there was some other way he could resolve the situation. Mr. Grado told me he could not, as one of the other Merchandisers had previously requested to have that Sunday off due to a commitment that could not be changed, and that another Merchandiser had been injured that day and so no one except Mr. Peters was available to come in that weekend. Mr. Grado told me he had checked with other DSMs to see if help was available but was unable to find someone else to work. I then asked Mr. Grado if there was some compelling reason Mr. Peters could not come in to work. Mr. Grado told me he had not spoken with Mr. Peters yet but had heard from one of his Account Managers, Jeff Katt, that Mr. Peters was going to call in sick. I told Mr. Grado that was not acceptable, as an employee cannot call in sick two days in advance of a shift, since he cannot know at that time whether he is actually going to feel well enough to work on the day in question. Under company policy, employees are required to call in sick to their immediate supervisor on the day of the missed shift, within two hours of their scheduled start time.

6. I instructed Mr. Grado to call Mr. Peters and find out what the situation was. I told Mr. Grado that unless Mr. Peters presented some compelling reason why he could not work on the day in question, Mr. Grado should expressly tell Mr. Peters that he was being given a direct order to come to work on Sunday, September 30, 2001 and that failure to

comply with that order was insubordination and would be grounds for termination.

7. Mr. Grado called me again later that day to let me know he had spoken with Mr. Peters. He told me that Stephen Peters had in fact refused to come in to work that weekend. He told me Mr. Peters told him he had plans, but had refused to tell him what the plans were, and at one point told Mr. Grado it was none of his business what his plans were. Mr. Grado told me he carried out my instructions to tell Mr. Peters he was being ordered to come in to work and that refusal to comply with the order was insubordination and could lead to termination. He told me that Mr. Peters responded by saying he understood, and would do what he needed to do, and Mr. Grado could do what he needed to do.

8. Mr. Peters conduct towards Mr. Grado on Friday, September 28, 2001 clearly constituted insubordination, which under BCI policies is a Group A policy sufficient to result in termination on the first offense.

9. Insubordination has a very specific and narrow definition as used by BCI Human Resources Personnel. Insubordination does not mean a situation where an employee has failed to carry out normal job responsibilities or failed to meet performance expectations. Nor is insubordination simply failing or even refusing to follow a supervisor's instructions. Rather, insubordination occurs when the employee knows that he is considered to be defying a direct order of the supervisor and that his conduct could lead to termination.

10. I made the determination on Friday, September 28, 2001, that Mr. Peters was insubordinate. Mr. Peters conduct on Friday, September 28, 2001, standing alone, would have warranted termination. However, I did not make the final

decision to terminate on Friday. By the time I finished my second conversation with Mr. Grado, it was late in the day. I assumed that Mr. Peters, whose regular workday ended around 2 or 3 p.m., had already gone home for the day, and so there was nothing we could do at that point, anyway. I told Mr. Grado we would deal with the situation on Monday.

11. At some point after my second conversation with Mr. Grado—either late Friday afternoon or early Monday morning—I spoke with Sherry Pedersen and learned some additional information about Stephen Peters. It would have been standard practice to pull an employee's personnel file in such a situation, and Ms. Pedersen had done so, either based upon my instruction or on her own initiative. I learned from Mr. Pedersen that Mr. Peters had been written up for insubordination in September 1999, and had been given a final warning at that time that any further incidents of insubordination could lead to termination. The incident from 1999 was very similar to the incident on September 28, 2001, in that Mr. Peters had refused to come in to work on a scheduled day off and had become confrontational with his supervisor. Mr. Grado was not Mr. Peters' supervisor in 1999, and the fact that Mr. Peters had had a similar incident with a different supervisor contributed to my conclusion that Mr. Grado had presented me with an accurate account of events.

12. On Monday, October 1, 2001, I met with Sherry Pedersen by telephone on at least two occasions to discuss the situation regarding Stephen Peters. Mr. Grado was also present at these meetings. I learned from Mr. Grado on Monday morning that Mr. Peters had not showed up to work on Sunday, September 30, 2001, and had made no attempt to contact Mr. Grado. I asked Mr. Grado to check and make sure that Mr. Peters had not tried to page him or leave a

message for him regarding why he was not coming in to work. I later learned from Mr. Grado or Ms. Pedersen that Mr. Peters had called Jeff Katt, an Account Manager, on Saturday night to tell him he was sick and was not coming to work on Sunday. Under BCI policy, employees are required to contact their immediate supervisor when they cannot come to work. Mr. Katt is not Mr. Peters' immediate supervisor, and, in fact, had no supervisory authority over Mr. Peters.

13. By the end of the day Monday, October 1, 2001, I had made a final decision to terminate the employment of Stephen Peters. This decision was based on several factors. First and foremost was the conduct of Mr. Peters towards Mr. Grado on Friday September 28, 2001. There was no question in my mind that Mr. Peters had committed the offense of insubordination that day. A single offense of insubordination is sufficient to warrant termination under BCI policy. However, this was not Mr. Peters' first offense of insubordination. The fact that Mr. Peters had previously been written up for insubordination and had already been given a final warning on this issue also contributed to my decision to terminate his employment. Mr. Peters had already been given more chances than the policy required on this issue, and I felt that any action short of termination at that juncture could set a bad precedent on the issue of BCI's stance with respect to insubordination.

14. The fact that Mr. Peters followed through on his announced intention of defying a direct order and did not come to work on Sunday, September 30, 2001, also contributed, to a lesser extent, to my decision to terminate his employment. Mr. Peters was not terminated for committing a "no call/no show" violation. Any such violation would have been handled under BCI's progressive discipline policy. Rather, I viewed Mr. Peter's failure to come to work on

Sunday not as an isolated attendance issue, but as the fulfillment of his stated intention the previous Friday to defy Mr. Grado's direct order. The fact that Mr. Peters called in sick to Jeff Katt on Saturday night had no impact whatsoever on my assessment of the situation, for several reasons. First, in my opinion, the timing of Mr. Peters' alleged sickness was highly suspect. I knew that he worked his scheduled shifts on Friday September 28, 2001 and Monday, October 1, 2001, which led me to conclude he could have come to work on Sunday if he wished to do so. I also found it particularly suspicious that Mr. Peters chose to call in sick to Mr. Katt, rather than Mr. Grado, given the fact that Mr. Peters had been warned by Mr. Grado the day before that if he did not come to work he would be subject to termination. In my opinion, which I formulated prior to my decision to terminate, if Mr. Peters had genuinely been sick, and unable to work, and was genuinely interested in preserving his employment relationship with BCI, he would have called in to explain the situation directly to Mr. Grado.

15. I was solely responsible for making the decision to terminate Mr. Peters' employment. At no point during my meetings with Mr. Grado did I ask—or did Mr. Grado offer—an opinion or recommendation as to what should be done with Mr. Peters.

16. Mr. Peters was terminated solely for insubordination. Mr. Peters was not terminated for performance issues. Mr. Peters was not terminated for attendance violations. Mr. Peters was not terminated because he called in sick to Mr. Katt instead of Mr. Grado. Mr. Peters was not terminated because he did not show up for work on Sunday, except to the extent this conduct is viewed in context with his exchange with Mr. Grado on Friday, September 28, 2001, as the

fulfillment of Mr. Peters stated intention to defy a direct order from Mr. Grado.

17. On Monday afternoon, I instructed Mr. Grado and Ms. Pedersen to meet with Mr. Peters on Tuesday morning and tell him he was being terminated for insubordination. I did not attend the termination meeting. At some point after the termination meeting, during a telephone conversation with Ms. Pedersen, Ms. Pedersen asked me if I knew that Mr. Peters was African American, because she had not realized that fact until she saw him at the termination meeting. In fact, I did not know until Ms. Pedersen told me, on October 2, 2001, that Mr. Peters was African American, which I stated to Ms. Pedersen.

18. Race played no part whatsoever in my decision to terminate the employment of Stephen Peters. I did not even know he was African American when I made the decision to terminate his employment. Neither Mr. Grado nor Mr. Pedersen informed me that Mr. Peters was African American. I had never previously met Mr. Peters or dealt with him with respect to any human resources issues. In September and October 2001, my area of responsibility included well over one thousand BCI employees.

19. Part of my responsibilities at BCI includes implementation of BCI's Affirmative Action, Diversity, and Equal Employment Opportunity ("EEO") policies. A copy of BCI's Equal Employment Opportunity policy in effect in 2001 is attached hereto as Exhibit 1. All new employees are given a copy of this policy during new employee orientation. The current version of this policy is also prominently posted in all BCI facilities. I conduct training sessions for all management employees on the topics of Affirmative Action and Workplace Diversity at least once a year, and I did so in 2000, 2001, and

2002. During these sessions—which expressly address BCI's EEO policy—management employees are instructed that discrimination based upon any prohibited criteria—including race—in hiring and terms and conditions of employee is both against the law and in violation of BCI policy. Representative materials from these training sessions are attached hereto as Collective Exhibit 2. These training sessions are mandatory for all members of management.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of February, 2004.

/s/ _____
PATRICIA K. EDGAR

EXHIBIT A-1

Coca-Cola Enterprises Inc.

To: All Corporate Employees

From: Lowry F. Kline /s/
Chairman and Chief Executive Operator

Subject: EQUAL EMPLOYMENT
OPPORTUNITY POLICY

Coca-Cola Enterprises continues to be an Equal Opportunity Employer. An ongoing commitment to Affirmative Action is an important part of our Corporate universe, and the creation of a workplace totally free of discrimination and harassment is a major goal.

Coca-Cola Enterprises Inc. observes measures to assure that the Company adheres to all applicable federal, state and local laws and regulations regarding the entire area of Equal Opportunity. The Company fully endorses this commitment, and will recruit, hire, train and promote individuals in all job titles without regard to race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, physical or mental disability, being a disabled veteran, veteran of the Vietnam Era or other eligible veterans.

All Supervisors and Managers are expected to actively enforce the Company's policy of Equal Opportunity, Affirmative Action and Non-Discrimination. Additionally, they are responsible for the prevention and immediate correction of any acts of harassment within their assigned areas of Supervision/Management. All employees are likewise obligated to avoid such behavior and to report incidents of

harassment or discrimination to responsible managers without delay.

Every employee has a responsibility to contribute to a positive work atmosphere, which reflects our non-discrimination policies. I have designated Dan Bowling, Senior Vice President, Human Resources, general responsibility for Affirmative Action Programs and Equal Opportunity Policies, and he will be assisted by Bernard Kunerth, Vice President Human Resources Processes. If you have any questions, please contact the appropriate Manager within your department or the Human Resources Manager. The Vice President HR Processes may be reached at (770) 989-3658.

Revised May 2002

EXHIBIT A-2

What is Discrimination?

Different treatment based on race, sex, religion, disability, age, etc.

- Intentional
- Intent may be shown by statements
- Intent may be shown by unexplained inconsistency

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Civ-02-1644
JOB/RHS (ACE)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,	)
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, d/b/a PHOENIX COCA-COLA BOTTLING COMPANY and COCA-COLA BOTTLING COMPANY OF ALBUQUERQUE, Defendant.	)

DECLARATION OF CESAR GRADO

1. I am Cesar Grado. I am employed by BCI Coca-Cola Bottling Company of Los Angeles ("BCI") as a District Sales Manager ("DSM") at the BCI facility located in Albuquerque, New Mexico, the same job position I held in September and October 2001. I am over 18 years of age and otherwise competent to provide testimony. The statements in this Declaration are based on personal knowledge.

2. My duties as DSM in 2001 included direct supervision of two Account Service Representatives (sometimes known as "Account Managers") and six Merchandisers. These are two

different job positions. Account Managers are salaried salespersons responsible for selling Coca Cola® products in the accounts—typically grocery stores and other retail outlets—in their area of responsibility. Merchandiser job duties include placement and rotation of product, cleaning and arrangement of display areas, and placement of promotional materials in accounts. I handle all scheduling and route assignments for Merchandisers working under my supervision.

3. Merchandisers generally work five days each week with two off days. Since the stores on each route have to be covered regardless of the day of the week, none of the Merchandisers working under my supervision will have the same two days off. Some of the Merchandisers working for me are assigned regular routes, and some work as "floaters," filling in for other Merchandisers on their scheduled days off and during absences.

4. All Merchandisers working under my supervision are sometimes required to work on their scheduled days off, in order to provide extra coverage for routes during particularly busy times and/or when other employees are absent. An example of a busy time would be when one or more accounts is running an "ad"—that is, offering special prices on Coca Cola® products which results in increased volume of sales and thus necessitates more frequent deliveries. When I need extra help covering routes, I first request volunteers. If I cannot obtain sufficient coverage in this manner, I will ask Merchandisers to come in on their days off, on a rotating basis.

5. At the time of his termination, Stephen Peters was the most senior Merchandiser working under my supervision. Because of his seniority, Mr. Peters had Saturday and Sunday

as his scheduled days off. Mr. Peters made it known to me that he did not like to work on his days off. However, to be fair to the other Merchandisers, I did sometimes ask Mr. Peters to work on his scheduled days off, on a rotating basis. During 2001 up until his termination, Mr. Peters worked on his days off on 8 occasions, including three Sundays and five Saturdays. During the same 34-week period, Merchandiser Frank Ortiz, who is Hispanic, worked on his scheduled days off 12 times, Merchandiser Donald Conner, who is white, worked on his scheduled days off 10 times, Merchandiser Arturo Lopez, who is Hispanic, worked on his scheduled days off 9 times, while a later hire, Merchandiser Robert Espinosa, who is Hispanic, worked on his scheduled days off on 7 times in only 21 weeks.

6. As a DSM, I am responsible for monitoring and evaluating the employees working under my supervision. When an employee has an attendance, performance, and/or disciplinary issue, I bring facts relating to the matter to the attention of our Human Resources Department. The Human Resources representative then makes the decision about which company policy or policies applies to the situation, if any, and the appropriate action to take based upon what has occurred. I do not have independent authority to discipline or terminate employees working under my supervision. All such disciplinary actions must be authorized by our Human Resources Department. It is my responsibility to deliver or communicate all disciplinary actions—whether verbal or written—to employees working under my supervision.

7. Three of the chain stores in my area were running ads over the weekend of Saturday, September 29 and Sunday, September 30, 2001. Thus, I was facing a high-volume work situation that weekend, and I determined that I needed to bring in an extra Merchandiser to work that weekend One of

the Merchandisers who had a scheduled day off on Sunday, September 30, 2001, Joseph Rivera, had previously told me that he had a commitment which prevented him from coming in on his day off. It is my recollection that I therefore asked one of my Account Managers, Jeff Katt, to relay a message to Stephen Peters that I needed him to work on one of his days off that weekend, either Saturday or Sunday, and it was my understanding based upon my communications with Mr. Katt that Mr. Peters agreed to work on Sunday, September 30, 2001. On Friday, September 28, 2001, I found out that one of my "floater" Merchandisers, Damian Mirabal, had suffered an on-the-job injury and would be out of work for a week. The doctor's note which we received from Mr. Mirabal is attached hereto as Exhibit 1. Mr. Mirabal typically covered Mr. Peters' routes on Mr. Peters' days off. Also on Friday, September 28, 2001, I learned from Mr. Katt that Mr. Peters was not going to work on Sunday, September 30, 2001. Mr. Katt told me that he believed Mr. Peters was not going to work on Sunday and might call in sick. However, Mr. Peters had worked all his scheduled days that week and had not been out sick. In any event, as of the middle of the work day Friday, September 28, 2001, I understood that Mr. Mirabal was out due to an injury, and that Mr. Peters was not agreeing to come to work Sunday September 30, and so not only was I not going to have the extra coverage I wanted for that weekend, but, with Mr. Mirabal's absence, I was actually going to be a person short. The remaining Merchandisers were already scheduled to work that weekend, except for Mr. Rivera, who was unavailable, and so I had no one left to bring in but Mr. Peters. The schedule showing hours worked by Merchandisers that week is attached as Exhibit 2 hereto. I did check with other District Sales Managers to see if they had anyone available to help me, but they did not.

8. I understood around mid-day on Friday, September 28, 2001, that I would need to order Mr. Peters to come in to work that weekend. I decided to contact the Human Resources Department for advice on how to handle the situation. Ordinarily, I would have spoken with Sherry Pedersen, but she was out of the office, and so I called Pat Edgar in Phoenix. I explained the situation to Ms. Edgar. She asked me if I had looked into every other way of getting the routes covered, and I said I had. She told me I could require Mr. Peters to come in to work. She told me that if I encountered resistance I needed to explain to Mr. Peters very clearly that he was being given a direct order and that failure to comply with the order would be insubordination and could lead to termination.

9. After I got off the phone with Ms. Edgar, I paged Mr. Peters. Mr. Peters called me back immediately. I told Mr. Peters I needed him to work that weekend. Mr. Peters said he could not work because he had plans. I asked Mr. Peters what his plans were, in an effort to determine whether he was able to work one of the weekend days. I offered to let him work Saturday rather than Sunday. Mr. Peters told me that his plans were none of his business, and again refused to come in to work at all that weekend. Mr. Peters raised his voice during this exchange. At that point I told Mr. Peters that his refusal to work as ordered was insubordination, and could lead to termination. Mr. Peters told me to do what I have to do, and he would do what he had to do. The conversation then ended as we both hung up.

10. After I spoke with Mr. Peters, I called Pat Edgar back and told her what had happened. At that point it was late afternoon Friday. Ms. Edgar told me we would deal with the situation on Monday. I believe I also spoke to Ms. Pedersen

about the situation on Friday afternoon, although it may not have been until Monday morning.

11. Based Mr. Peters' comments to me during our telephone conversation on Friday, September 28, 2001, I had no expectation that he would be at work on Sunday, September 30, 2001. Thus, I spoke with Jeff Katt on Friday afternoon and made the necessary arrangements to cover all the routes for Sunday. There were no other Merchandisers available to come in, and so I just split the accounts which needed coverage between myself and Mr. Katt.

12. Mr. Peters did not come to work on Sunday, September 30, 2001. He made no attempt to contact me over the weekend. Mr. Peters reported for work as scheduled on Monday morning, October 1, 2001.

13. On Monday, October 1, 2001, I met with Sherry Pedersen and Pat Edgar at least twice to discuss the situation with Mr. Peters. Ms. Edgar attended the meetings by phone. During these conversations, I simply reported the facts to Ms. Edgar and gave no opinion or recommendation as to what I thought should happen to Mr. Peters. At some point during one of these conversations, Ms. Edgar asked me to check to make sure Mr. Peters had not made any attempt to contact me over the weekend. I did check and while I confirmed that Mr. Peters had made no attempt to contact me, I learned for the first time that he had called in sick to Jeff Katt on Saturday night. I relayed this information to Ms. Pedersen and Ms. Edgar on Monday. At some point on Monday Ms. Edgar informed me that it had been determined that Mr. Peters had committed insubordination and would be terminated. I was instructed to bring Mr. Peters to Sherry Pedersen's office the first thing Tuesday morning, October 2, 2001.

14. I asked Mr. Peters to meet me in Sherry Pedersen's office on Tuesday morning. At that point, I delivered the termination paperwork to Mr. Peters and told him he was being terminated for insubordination. The paperwork which was delivered to Mr. Peters is attached hereto as Exhibit 3.

15. During my discussions with Pat Edgar and Sherry Pedersen leading up to Mr. Peters termination, I never mentioned to either one of them that Mr. Peters is African American. The subject of Mr. Peters' race never came up in any of my discussions with Ms. Pedersen and/or Ms. Edgar, or in any of the conversations which I witnessed between Ms. Pedersen and Ms. Edgar prior to Mr. Peters' termination.

16. I have no racial animosity towards African Americans generally, or towards Stephen Peters specifically. I have been trained by BCI regarding diversity and discrimination issues, and I know that under BCI policy and under law, race may not play a part in any decision which adversely effects an employee. Mr. Peters' race had nothing whatsoever to do with how I handled this situation.

17. I have supervised employees who had performance and/or attendance problems, and I have brought these issues to the attention of the BCI Human Resources Department. For instance, both Arturo Lopez and Damian Mirabal, Merchandisers working under my supervision, were written up under BCI's progressive discipline policy. Both Mr. Lopez and Mr. Mirabal had problems with attendance and work quality. As with all employees working under my supervision, I brought the problems regarding these individuals to the attention of Human Resources, and Ms. Pedersen and/or Ms. Edgar made the decision on how to handle these situations. Mr. Mirabal never refused a direct order from me and was never told that his conduct was insubordination.

18. Other than Mr. Peters, I have never had a situation where an employee refused a direct order, and, after being told his conduct was insubordinate and that he could be fired, told me to "do what I have to do."

19. On one occasion after Mr. Peters was terminated, Mr. Katt reported to me that Mr. Lopez had refused to return a page and had displayed a negative attitude about being paged. I then paged Mr. Lopez and he also failed to return my page. At that point, I entered a text message to Mr. Lopez. I don't remember the exact wording of my message to Mr. Lopez, but it was to the effect of telling him that if he refused to return my page he could be terminated. This incident occurred on November 20, 2001, several weeks after the incident with Stephen Peters, and so I remembered the previous instructions from Pat Edgar on how to clearly state a direct order to an employee and let the employee know he could be fired for his conduct, which is why I sent this text message to Mr. Lopez. Mr. Lopez never did return my page or call me that day. As a matter of fact, that was Mr. Lopez's last day working at BCI. He simply never returned to work and after he failed to show up for three days his employment was deemed to be terminated due to job abandonment. I informed Ms. Pedersen that Mr. Lopez was not coming in to work, and she instructed me how to document his termination. I never told Ms. Pedersen about Mr. Lopez's failure to return my page, since, at that point, because he had apparently quit, it really did not seem to matter. However, if Mr. Lopez had continued as an employee of BCI, I would definitely have brought his conduct to the attention of the Human Resources Department, just as I did with Stephen Peters.

20. Monica Lovato was a Merchandiser working under my supervision. Ms. Lovato did not have any performance issues

when she worked under my supervision. Ms. Lovato never refused a direct order from me to come to work, and I never told Ms. Lovato that her conduct could be considered insubordination and could lead to termination.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3 day of February, 2004.

/s/_____
CESAR GRADO

EXHIBIT B-2

This report shows cost compared to sales volume. It also show merchandisers hours by day. Keep in mind we need 6 merchandisers a day to cover routes.

Cost Per Case Recap
DSM CESAR GRADO
Week Ending 9-30-01

Cases Per Hour	45.61
Weekly Cases	17468
CPC	0.234

Merchandiser Name	**Mon.**	**Tues.**	**Wed.**	**Thurs.**
Russell Kroger	0.00	0.00	8.50	10.15
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	10.93	9.15	7.67	46.40
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	40	6.4		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	0		0
	Hrly Rt	**Pay**		
	9.25	458.80		

Merchandiser Name	**Mon.**	**Tues.**	**Wed.**	**Thurs.**
Stephen Peters	8.68	10.13	8.45	10.57
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	11.23	0.00	0.00	49.06
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	40	9.06		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	0		0
	Hrly Rt	**Pay**		
	10.50	562.695		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Barry Lafaver	2.02	11.50	8.52	12.13
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	12.96	10.00	10.63	67.68
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	40	27.78		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	0		0
	Hrly Rt	**Pay**		
	9	735.03		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Damian Mirabel	7.40	0.00	0.00	12.05
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	1.35	0.00	0.00	20.80
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	20.8	0		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	0		0
	Hrly Rt	**Pay**		
	9.25	192.40		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Carlos Barrera	10.05	10.13	10.75	0.00
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	0.00	10.40	9.28	50.61
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	40	10.61		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	0		0
	Hrly Rt	**Pay**		
	9.25	517.214		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Arturo Lopez, Jr.	11.43	12.98	0.00	0.00
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	10.60	9.53	8.52	53.06
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	40	13.06		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	0		0
	Hrly Rt	**Pay**		
	9	536.31		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Robert Espinosa	9.07	9.13	10.95	0.00
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	0.00	15.24	0.00	44.39
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	40	4.39		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	0		0
	Hrly Rt	**Pay**		
	9	419.265		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Joseph Rivera	7.48	0.00	10.09	12.12
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	11.13	9.25	0.00	50.88
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	40	10.88		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	0		0
	Hrly Rt	**Pay**		
	9	506.88		

Hours Cost	**Ttl Hr**	**Reg Hrs**	**OT Hrs**
	383	300.8	0
	Vac Hrs	**Sck Hrs**	**Hol Hrs**
	0	0	0
	Lt Duty	**Hrly Rt**	**Pay**
	0	0	3928.59
Mileage Cost			162.15
			4090.74

This scheduled week shows hours by day by Merchandiser.

• Russell Kroger had already taken his normal days off prior to weekend. (regular workday)

• Barry Lafaver came in every day of the week to help our needs in help.

• Damian Maribel took his days off, and got hurt on Friday 9-28-01. This was one of the routes we needed to cover over the weekend. (regular workday - offwork status)

• Carlos Barrera took his normal days off and was scheduled for the weekend. (regular workday)

• Arturo Lopex took his days off and was scheduled to work the weekend. (regular workday)

• Robert Espinosa took his normal days off. Worked late night on Saturday to cover his Sunday Route. regular day

• Joseph Rivera normal days off are Sunday & Monday.

EXHIBIT B-3

DISCIPLINARY STATUS NOTICE

EMPLOYEE NAME: Stephen Peters
Date: 10/02/2001
DEPARTMENT: Sales
SUPERVISOR: Cesar Grado
JOB TITLE: Merchandisers
DATE HIRED: 05/03/1995
VIOLATION DATE: 09/30/2001

DETAILS OF VIOLATION: List issues of violation. Refer to specific provisions of Company policy, if applicable. Explain as completely as possible - include dates, times, persons involved, etc.

Group A: Insubordination: On Friday 9-28-01 you were given a direct order to come in to work on Sunday 9-30-01 due to business necessity. I also explained how this was a direct order and failure to comply with the directive would be considered insubordination and would result in termination. You explained how you had plans and that I "should do whatever I had to do". You did not report to work on Sunday 9-30-01, therefore your employment is being terminated for insubordination.

PREVIOUS WARNING(S) TO EMPLOYEE: Yes__X__

If "Yes" - Type & When: 09/21/1999 Insubordination

IMMEDIATE IMPROVEMENT MUST BE MADE & MAINTAINED OR FURTHER DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION, WILL BE TAKEN

EMPLOYEE STATEMENT: I DO NOT AGREE

EMPLOYEE SIGNATURE: /s/_____DATE: 10/2/01

SUPERVISOR SIGNATURE:/s/_____DATE: 10/2/01

WITNESS SIGNATURE: /s/_____DATE: 10/2/01

WITNESS SIGNATURE: /s/_____DATE: 10/2/01

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Civ-02-1644
JOB/RHS (ACE)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,	)
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, d/b/a PHOENIX COCA-COLA BOTTLING COMPANY and COCA-COLA BOTTLING COMPANY OF ALBUQUERQUE, Defendant.	)

DECLARATION OF SHERRY PEDERSEN

1. I am Sherry Pedersen. I am currently employed by BCI Coca-Cola Bottling Company of Los Angeles ("BCI") in the position of Employee Relations Manager. In September and October of 2001, I held the position of Senior Human Resources Administrator. At that time, I was the top-ranking Human Resources representative at BCI's Albuquerque, New Mexico facility. I reported to Patricia ("Pat") Edgar, who was at that time an Employee Relations Manager based in Phoenix. I am over the age of 18 and otherwise competent to provide this declaration. The statements contained in this Declaration are based on personal knowledge.

2. In my role as Senior Human Resources Administrator, I authorized all disciplinary actions taken with respect to employees at the Albuquerque facility. Managers and supervisors brought issues to my attention regarding employee conduct, performance, and attendance. I would then decide whether any additional factual investigation was necessary. If I decided additional investigation was necessary, I would instruct the manager or supervisor to conduct such investigation or conduct the investigation myself, as appropriate. When I felt I had all the facts I needed to assess the situation, I would decide which BCI policy or policies applied to the particular situation, if any, and what disciplinary action, if any, would be taken. All terminations had to be authorized by Pat Edgar; I sometimes consulted with Ms. Edgar on non-termination situations as well.

3. In addressing employee disciplinary issue, BCI Human Resources personnel consult written policies setting for workplace rules and regulations. As set forth in Exhibit 1 hereto, these rules and regulations are divided into three categories according to the severity of the infraction. Group A violations address the most serious workplace issues, such as insubordination. Group A violations will be sufficient to result in immediate discharge, although this is not a mandatory result. Group B and C violations, on the other hand, are generally dealt with in a progressive manner, depending on the nature of the infraction. Group C also encompasses attendance violations. Portions of BCI's attendance policy are set forth in Exhibit 2 hereto. No call/no show violations are handled under a separate policy as set forth in Exhibit 3, and are also subject to progressive discipline. In addressing disciplinary issues, Human Resources personnel retain discretion in interpreting and applying these policies, as each situation is unique and must be assessed on an individualized basis.

4. For some reason that I cannot now recall, I was unavailable for the first part of the day on Friday September 28, 2001, and so I did not know there was an issue with Mr. Peters until after Mr. Grado had already spoken with Pat Edgar about the situation. I learned what was going on either late Friday afternoon or early Monday morning. I do not remember whether I first learned of the situation from Mr. Grado or Ms. Edgar.

5. Either Friday afternoon or Monday morning, I pulled Mr. Peters' personnel file and found a similar incident in the file which had occurred in September 1999. The documents in the file showed that Mr. Peters had been written up by a previous supervisor for insubordination when he refused to work on a weekend, and became verbally confrontational with his supervisor on a customer's premises. This incident occurred before I came to work at BCI. The documents relating to this incident, attached hereto as Exhibit 4, show that Mr. Peters was specifically warned at that time that further such conduct could result in termination. I relayed this information to Pat Edgar.

6. I met with Cesar Grado and Pat Edgar by phone on Monday, October 1, 2001, to discuss the situation regarding Mr. Peters. Mr. Grado informed us at that time that Mr. Peters had not come in to work on Sunday and had not attempted to contact him. Mr. Grado later told me that Mr. Peters had called in sick to Jeff Katt, which I relayed to Ms. Edgar.

7. On Monday afternoon, Ms. Edgar told Mr. Grado and myself she had decided that Mr. Peters would be terminated for insubordination. Acting upon Ms. Edgar's instruction, Mr. Grado delivered the termination paperwork to Mr. Peters

in my office first thing in the morning on Tuesday, October 2, 2001.

8. During his employment at BCI Mr. Peters never brought any complaints of race discrimination to the attention of the Human Resources Department.

9. I have no recollection of ever having met Stephen Peters prior to October 2, 2001. At any given time around 200 individuals are employed at BCI's Albuquerque facility, and I have very little one-on-one contact with many of these individuals, absent a complaint, disciplinary issue, or other situation which would bring them to my attention. In addition, Merchandisers spend most of their time out in the field servicing accounts, and are rarely seen at the facility's administrative offices, where I work.

10. Until the moment Mr. Peters walked into my office for the termination meeting on October 2, 2001, I did not know he was African American.

11. The only other employee to be terminated for insubordination which I have been involved in during my employment at BCI was Brian Esquibel, a Hispanic male. Mr. Esquibel was not a Merchandiser, and did not report to Cesar Grado at the time of his termination. Mr. Esquibel refused a supervisor's direct order to take out a load of product, telling the supervisor to "go ahead and fire me." Documents relating to Mr. Esquibel's termination are attached hereto as Exhibit 5. From the facts presented to me I determined that Mr. Esquibel's conduct met the definition of insubordination since he knew his refusal of an order could lead to termination, as demonstrated by the fact he expressly stated "go ahead and fire me." Based on my investigation, I recommended to Ms.

Edgar that Mr. Esquibel should be terminated, and Ms. Edgar authorized the termination.

12. Arturo Lopez, a Hispanic male, was a Merchandiser Working under the supervision of Cesar Grado. Mr. Lopez had Group C attendance and work performance issues and received progressive discipline to address these issues. To my knowledge, Mr. Lopez never refused a direct order and was never insubordinate. Mr. Lopez ultimately failed to report to work for three consecutive days and was deemed to have voluntarily terminated his employment. I made all decisions with respect to discipline issued to Mr. Lopez, consulting with Pat Edgar on the final termination decision.

13. Damian Mirabal, a Hispanic male, was a Merchandiser working under the supervision of Cesar Grado. Mr. Mirabal had Group C attendance and work performance issues and received progressive discipline to address these issues. To my knowledge, Mr. Mirabal never refused a direct order and was never insubordinate. Mr. Mirabal was suspended, placed on probation, and ultimately terminated for unsatisfactory performance. I made all decisions with respect to discipline issued to Mr. Mirabal in 2000 and 2001, consulting with Pat Edgar on the final termination decision.

14. Monica Lovato, a Hispanic female Merchandiser who reported to Cesar Grado, was never issue any disciplinary actions during her employment with BCI. Ms. Lovato voluntarily terminated her employment with BCI in 2002.

15. Kelly Sage, a white male, was not a Merchandiser and did not report to Cesar Grado. In November 2000, Mr. Sage's supervisor brought to my attention that Mr. Sage failed to follow his supervisor's order to reload his truck and take

out a delivery, and left the premises without his supervisor's permission. In my assessment, Mr. Sage's conduct in that instance, while a violation of company policy, did not constitute insubordination as I was not presented with any evidence that he was told or was aware that his conduct was insubordination and could lead to termination. Therefore, I made a decision to issue Mr. Sage a written warning for Group B violation, suspend him without pay for three days and warn him that future such conduct could result in termination.

16. Other than the present lawsuit, Mr. Grado ever been the subject of a race discrimination complaint during his employment at BCI.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3 day of February, 2004.

/s/_____
SHERRY PEDERSEN

EXHIBIT C1

EMPLOYEE RULES AND REGULATIONS

The following rules and regulations are divided into three groupings according to the severity of the infraction(s).

Group A violations will be sufficient to result in immediate discharge, without prior warning.

Group B violations will be dealt with in a progressive manner. For the first violation of any Group B rule, the employee will generally be suspended. The next violation of any Group B rule will be sufficient to result in discharge.

Group C violations will also be dealt with in a progressive manner. The first violation of any Group C rule will generally result in a warning (either verbal or written, depending on the severity or other factors). A second violation of any Group C rule will result in either a written warning or suspension. Once an employee has been suspended for violation of any Group C rule, the next step may be discharge for violation of any Group C rule.

These work rules do not cover every conceivable matter. Therefore, if something happens that is not precisely covered by these rules, the Company reserves the right to treat each case on its own merits and to enhance or diminish the discipline according to the severity of the situation as deemed appropriate. The Company reserves the right to add delete and revise the Employee Rules and Regulations as outlined above.

KEY: VW = Verbal Warning
W = Written Warning
S = Suspension
D = Discharge

NOTE: Where W/S, S/D, etc. is indicated, the penalty for the rule infraction may vary, depending upon the severity of the offense.

Group A	**Offense**			
	1st	2nd	3rd	4th
1. Falsification of employment application, work hour records, or other Company records.	D			
2. Making claims of illness or occupational injury or disability in bad faith or knowing them to be false.	D			
3. Theft, fraud, embezzlement, or unauthorized removal of Company, customer, or fellow employee property or funds.	D			
4. Destruction or abuse of Company property or that of fellow employees or customers.	D			
5. Insubordination	D			

Group A	Offense 1st	2nd	3rd	4th
6. Possession, sales, use or being under the influence of alcohol or drugs during work hours (including breaks and lunch), on/in Company property, or in Company uniform.	D			
7. Refusal to submit to a blood, urine or other medical test to detect drugs or alcohol.	D			
8. Possession of firearms or other weapons on/in Company property.	D			
9. Provoking, fighting or committing any act of violence against any person during working hours or on/in Company property, or as a result of the employment relationship.	D			
10. Absence of three (3) consecutive working days without notifying the Company.	D			
11. Harassment of another employee due to that employee's race, sex, religion, national origin, age, handicap or disability, or veteran status, including sexual harassment.	D			

Group B	Offense 1st	2nd	3rd	4th
12. Failure to immediately report a vehicular accident as provided by Company policy.	D			
13. Punching another employee's timecard.	D			

Group B	Offense 1st	2nd	3rd	4th
1. Misconduct which casts discredit upon Company reputation or image while on Company time, in Company uniform or in/on Company property.	W/S	S/D	D	
2. Use of threatening, abusive or profane language towards supervision, customers, or employees.	W/S	S/D	D	
3. Horseplay.	W/S	S/D	D	
4. Sleeping on the job.	S/D	D		
5. Delaying or restricting operations or influencing others to do so.	S	D		

Group B	Offense 1st	2nd	3rd	4th
6. Failure to inform supervision of the use of prescriptions or over-the-counter medications that could impair ability to perform assigned duties.	S	D		
7. Failure to report an on-the-job injury per Company policy.	W/S	S/D	D	
8. Leaving job assignment without notifying supervision.	S	D		
9. Intimidating, threatening, coercing or interfering with a supervisor or other employee.	S	D		
10. Unauthorized use of Company vehicle or permitting unauthorized passengers to ride in Company vehicles.	S/D	D		
11. Removal of product from warehouse stock, delivery vehicles or customer stock for personal consumption.	W/S	S/D	D	

Group C	Offense 1st	2nd	3rd	4th
1. Failure to satisfactorily carry out normal assigned duties.	VW/W	W/S	S/D	D
2. Careless and/or recurrent errors.	VW	W	S	D
3. Failure to observe assigned work schedule, including start and stop time of breaks and lunch.	VW	W	S	D
4. Failure to comply with attendance policy.	VW	W	S	D
5. Failure to observe safety rules or common safety practices.	VW	W	S	D
6. Neglect of duty while on Company time. Engaging in activities other than assigned work, such as loitering, unauthorized absences from work station, excessive visiting with other employees.	VW	W	S	D
7. Solicitation of funds or sale of articles for any cause during Company time whether in work areas or non-work areas.	W		S	D
8. Excessive on-the-job injuries to include reinjury following medical release.	VW	W	S	D

Group C	Offense			
	1st	2nd	3rd	4th
9. Preventable vehicular accidents in accordance with Policy guidelines.	W	S	D	
10. Distribution of written materials during work time or in work areas. Posting notices or other written materials on Company bulletin boards or within the workplace.	W	S	D	
11. Unauthorized personal use of Company phones' equipment or facilities.	W	S	D	
12. Smoking in restricted areas.	W	S	D	
13. Violation of dress code.	VW	W	S	D
14. Littering or poor housekeeping including Company vehicles.	VW	W	S	D
15. Failure to provide the Company with current address, home phone number and emergency contact.	VW	W	S	D

EXHIBIT C-2

PHOENIX DIVISION COCA-COLA ATTENDANCE POLICY

Policy

It is expected that employees will report to work each day they are scheduled and ready to begin work at their assigned times, unless they are too incapacitated by illness, injury, or overwhelming, compelling personal circumstances. However, when absences or tardies are unavoidable, the following shall be required:

Absences

1. Employees who are going to be absent, must call in to their immediate supervisor, or his/her designee, at least one-half hour prior to his/her regular starting time. Failure to call or notify their supervisor may result in immediate disciplinary action.

2. Supervisors will inquire as to the general reason for the absence or tardy.

3. Employees are expected to call in at the beginning of each day of an absence, per #1 above, unless other arrangements are made with their supervisor, such as an extended absence or leave of absence. Failure to call or notify their supervisor may result in immediate disciplinary action.

4. If absence is the result of an occupational injury or illness where modified duty has been assigned, it is expected that employees will let their supervisor know where they can be reached while absent.

5. Upon return from an absence, an employee must report his or her return directly to their immediate supervisor.

6. Supervisors will document or log all callins and other reports, noting time, date and reason for call or report.

7. Supervisors may require written doctor's statements attesting to the ability of the employee to return to their regular work duties without unnecessary risks and/or to verify illness or injury. Supervisors also reserve the right to determine whether or not personal circumstances are so overwhelming or compelling, as to require absence from work.

The Company endorses a no-fault attendance policy. Absenteeism for <u>any</u> reason, excused or not, except for jury duty, bereavement, on-the-job injury or vacations, which is in excess of ten regularly scheduled days in a 12-month period, (consisting of at least three separate incidents in the same 12-month period – note: a three-day absence for flu is recorded as one incident), shall be grounds for progressive disciplinary action, which may culminate in discharge if sustained improvement in attendance is not immediately forthcoming. Similarly, if there are more than five incidents of absenteeism in a 12-month period regardless of number of days

EXHIBIT C-3

Memorandum please post

To: All Employees, Desert Sun Division
From: Human Resources
Date: 10/21/99
Re: NO CALL NO SHOW

As you are aware, no call no show by an employee is a serious violation of company guidelines and is costly to our organization. It places a hardship on customers, co-workers, and supervisors to cover another's work responsibilities after the fact without any benefit of communication.

Everyone knows that 3-days consecutive no call no show will result in termination of employment. However, we want to make it very clear that non-consecutive no call no show events are handled according to the following progressive steps:

1 day	Written Warning
2 days	Suspension
3 days	Termination

Employees are determined as no call no show if they fail to call in and fail to arrive at work within a reasonable timeframe to enable them to perform their scheduled work. This will be determined by management. All other circumstances will be according to the attendance policy.

EXHIBIT C-4

DISCIPLINARY STATUS NOTICE

EMPLOYEE NAME: Stephen Peters
Date: 9/17/99
DEPARTMENT: Sales - Home Market
SUPERVISOR: Eddie Esquivel
JOB TITLE: Bulk Merchandiser
VIOLATION DATE: 9/17/1999
TIME: 11:50am
PLACE: Albertson's

NATURE OF VIOLATION: Policy/Procedures, Misconduct

DETAILS OF VIOLATION: List issues of violation. Refer to specific provisions of Company policy, if applicable. Explain as completely as possible - include dates, times, persons involved, etc.

At 10:00 AM, Friday, Sept. 17, Bill Donnelly received a phone call from Eddie E stating that Stephen Peters refused to work Saturday or Sunday of this weekend. Eddie stated Stephen was rude and unprofessional in his conduct and hung-up the phone on Eddie before Eddie was done talking at 11:40 am, Bill Donnelly met with Stephen at the Albertson's on Juan Tabo and Lomas. Stephen was visibly upset at this meeting with Bill; he paces from one side of Bill to the other and spoke a raised voice throughout the consecration. Three times during the conversation, Stephen said he was going to have Bill & Eddie's job. Stephen Peters was immediately removed from further duty and sent home. Mr. Peters is reminded of the following:

1) All Coca-Cola employees must follow company procedures and follow direct orders from their supervisors. Failure to comply is considered a direct act of insubordination.

2) At no time will threats to supervisors & managers' positions with CCE be tolerated. This is also considered a direct act of insubordination is subject to disciplinary action up to and including termination.

Any further instances of insubordination can result in termination. FINAL WARNING.

Disciplinary Suspension (without pay) of 2 day(s) from 9/20 to 9/21. Return to Work on 9/22/99.

IMMEDIATE IMPROVEMENT MUST BE MADE & MAINTAINED OR FURTHER DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION, WILL BE TAKEN

EMPLOYEE SIGNATURE: Refused to Sign DATE:

SUPERVISOR SIGNATURE:/s/_____ DATE: 9/21/99

HR APPROVAL: /s/_____ DATE: 9/20/99

EXHIBIT C-5

EMPLOYEE NAME: Bryan Esquibel
Date: 04/25/2002
DEPARTMENT: Distribution
SUPERVISOR: Rick Gallegos
JOB TITLE: Driver
DATE HIRED: 03/03/1998
VIOLATION DATE: 04/23/2002
NATURE OF VIOLATION: Rules/Regulations

DETAILS OF VIOLATION: List issues of violation. Refer to specific provisions of Company policy, if applicable. Explain as completely as possible - include dates, times, persons involved, etc.

Group A-#5-Insubordination. On 4/23/02, you were given a directive by your supervisor, Rick Gallegos, to take out a hot shot delivery. By your own admission, you told Rick you would not take out the hot shot. Rick told you again to take out the hot shot and you again refused. You walked away from Rick and said 'go ahead and fire me'. You are aware of the process for determining who takes out the hot shot orders. You were the second driver in, therefore, you were required to take out the hot shot. You were asked by Sherry Pedersen on 4/24/02 to give a written statement, so that your information regarding this incident could be taken into consideration during the suspension pending. You were led to the hospitality room to write your statement, however, it was discovered a few minutes later that you had left the facility without writing a statement or notifying supervision that you were leaving. Therefore, based on the information provided your employment is being terminated for insubordination.

ACTION TAKEN: Discharge

PREVIOUS WARNING(S) TO EMPLOYEE: No X

IMMEDIATE IMPROVEMENT MUST BE MADE & MAINTAINED OR FURTHER DISCIPLINARY ACTION, UP TO AND INCLUDING TERMINATION, WILL BE TAKEN

EMPLOYEE SIGNATURE: Refused to Sign **DATE:**

SUPERVISOR SIGNATURE: /s/ _____ **DATE:** 4/25/02

WITNESS SIGNATURE: /s/ _____ **DATE:** 4/25/02

WITNESS SIGNATURE: /s/ _____ **DATE:** 4/25/02

EXHIBIT E

EXCERPTS OF DEPOSITION OF STEPHEN BRIAN PETERS

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A. Yes, sir.
Q. In that same day?
A. Yes, sir.
Q. Always or sometimes?
A. Sometimes.
Q. Depending on what?
A. If the store is on ad, which means if the store is on sale, if it has 12-packs are cheap, or two liters are cheap, or half liters or what have you, second service, sometimes third service.
Q. Same day?
A. Same day.
Q. All right. What does it mean in your business, or in that business, in the merchandising business to see on ad?
A. On sale.
Q. Products are on sale?
A. Yes, sir. That means that if Coca-Cola is on ad, they're on sale. They have an ad in the paper, on ad.
Q. So if a store is on ad, say at Albertsons they've run in the newspaper an advertisement of two liter Coca-Colas for 99 cents or something --
A. Yes, sir.
Q. -- is that a good example?
A. Yes, sir.

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Q. And what does that mean to the merchandiser if a store is on ad?

MS. MOLINA: Object to the form of the question. Go ahead.

A. That means that you may have to go back and second service or third service that store.

Q. (By Mr. Presnell) Because there's more products being sold?

A. More volume, yes, sir.

Q. More volume. So you've got to restock shelves more often?

A. Yes, sir.

Q. What's a hot ad?

A. A hot ad is, for instance, 12-packs for $1.99. If I recall, that's what I would call a hot ad.

Q. Well, what's the difference between being on ad and a hot ad?

A. A hot ad is an ad that the sodas that, you know, are a lot cheaper than what they're normally supposed to be, that's a hot ad.

Q. Substantial discounts?

A. Yeah.

Q. So if you can get a six-pack of Coca-Cola for 99 cents, that's a hot ad?

A. That's a hot ad.

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Q. All right. So if we continue with your day, you finish the second store, you go to the third store and merchandise that store?

A. Yes' sir.

Q. And then you do the same with the fourth and fifth?

A. Yes, sir.
Q. Then when you finish with your last one, you clock out?
A. Yes, sir.
Q. By phone?
A. Yes, sir.
Q. And you go home?
A. Yes, sir.
Q. You do not have to report to the Coca-Cola facility?
A. No, sir. You might have to report to your supervisor to let him know that you're done for the day.
Q. Okay. How do you make that report?
A. Paging, let him know that you're finished for the day, he'll say "Okay, clock out," and you go home.
Q. Do yon physically talk on a mobile phone, or is it through a pager system?
A. Mobile phone.
Q. So you page your supervisor and he or she then

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calls you; is that right?
A. Yes, sir.
Q. And you say "I'm done"?
A. Yes, sir.
Q. What's the purpose of calling the supervisor to let him know you're done?
A. To see if anyone needs any help on the route, or if there's any other stores that need service that someone hasn't done yet.
Q. To help out other merchandisers?
A. Yes, sir.
Q. Okay. Did that ever happen to you, when you would call in to clock out, say you were finished and your supervisor says, "I need you to cover another store for me"?
A. All the time.

Q. All the time?
A. Yes, sir.
Q. Okay. Did that happen more frequently when a store was on ad or there was a hot ad being run?
A. I'd say so.
Q. Okay. Who did you call when you were finished with your stores?
A. My immediate supervisor.
Q. Okay. Who was that?

* * *

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needs are for those stores he has?

MS. MOLINA: Object to form, speculation. Go ahead.

Q. (By Mr. Presnell) Is that right?
A. The account manager has a route, just like I have a route. He has certain stores that he has to fill up with sodas, as far as he knows what to order.
Q. Right.
A. He has a route.
Q. Okay.
A. Just like I have a route.
Q. And an account manager is only responsible for his route, or is he responsible for other account manager's routes?
A. As far as to my knowledge, he's only responsible for his route.
Q. Okay. So that account manager would only have knowledge of the merchandising needs of his accounts?
A. Of his accounts.
Q. Okay. When you were employed at Coca-Cola Bottling Company between 1999 and 2001, did you ever make any internal complaints at the company?

A. I can't recall. I think I made a complaint as far as after -- I can't recall.
Q. Okay. Something's in your mind. You can't

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recall whether you made a complaint or not?
A. Yeah. I mean, if you would rephrase that, as far as a complaint against --
Q. Well, I mean a complaint -- let me try to break it up for you. Maybe that will help you. Did you ever make a formal complaint between 1999 and 2001 about any work-related problem?
MS. MOLINA: Objection, ambiguous, vague. Go ahead.
A. Not that I recall.
Q. (By Mr. Presnell) Okay. Do you recall ever completing a complaint type form or any other type of written form about any work-related problem?
MS. MOLINA: Same objection. Go ahead.
A. Oh, I think to Bill Donnelly about the conversation we got into. Maybe that's -- if I recall, I might have filled something out about that.
Q. (By Mr. Presnell) Okay. Do you remember any other written complaints you may have made during that time?
A. I can't recall.
Q. Okay. What was the nature of your complaint against Mr. Donnelly?
A. The nature of it was that he came in the store hollering at me.

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Q. And your complaint was what, in general terms?
A. I can't recall everything that I wrote in the complaint, but it was probably based on disrespect, disrespecting me.

Q. Did you ever complain, whether formally or informally, that Mr. Donnelly discriminated against you because of your race?
A. I can't recall.
Q. Did you ever make any complaints, formal or informal, that somebody at somebody at Coca-Cola discriminated against you because of your race?
A. By "any complaints," do you mean -- are you asking me did I make any complaints at Coca-Cola?
Q. Correct.
A. I never made any complaints at Coca-Cola, filled out any complaints at Coca-Cola.
Q. Okay. Did anyone ever make any complaints against you while you were at Coca-Cola?
A. Any complaints against me as far as, what kind of complaints?
Q. Work-related conduct, you acted inappropriately or you did this or did that.
A. Mr. Donnelly.
Q. Any others, that you recall?
A. Not that I recall.

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Q. Was Mr. Donnelly's complaint against you, did it arise out of the same incident that your complaint against him arose out of?
A. Yes, sir.
Q. Okay. There weren't two separate incidents that we're talking about?
A. No, sir.
Q. Okay. What year was the incident with Mr. Donnelly that resulted in these complaints?
A. If I'm not mistaken, I think it was 1999.

Q. Did Coca-Cola take any disciplinary action against you arising out of those complaints?
A. Yes, sir.
Q. What was the discipline?
A. I think I was suspended for two days, if I'm not mistaken.
Q. Were you given any warnings?
A. Any warnings?
Q. As part of that discipline.
A. An a warning, you mean afterwards, or -- no, sir.

Q. That's a good clarification. Let me restate the question. In addition to the two-day suspension, were you warned that further incidents could result in termination.
A. Not that I recall, as far as --

* * *

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Q. All right. He told you that he needed you to work on September 30, 2001, Sunday?
A. Yes.
Q. What was your response?
A. I told him that I had plans, and I wasn't feeling well all that week. I stated that to him.
Q. Did you tell him anything else?
A. I can't recall. I think that's all I told him.
Q. Do you recall anything else about the conversation?
A. He told me to report to work -- he said, "I'm not asking you to come to work, I'm telling you to come to work. If you do not come to work, it could lead to insubordination and could lead to termination."
Q. That's what Mr. Grado told you?
A. That's what Mr. Grado told me.
Q. In the same phone conversation?

A. In the same phone conversation.
Q. Okay. And did you provide a response to that statement by Mr. Grado?
A. Yes, I did.
Q. What was your response?
A. I told him -- that's when I stated to Mr. Grado that I had plans, and that I wasn't feeling well all week. And then I just told him to do what he got to do and I'll

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do what I got to do.
Q. You told Mr. Grado that on September 28th?
A. Yes, sir.
Q. What did Mr. Grado say?
A. That was all. That was the end of the conversation.
Q. Do you remember anything else about the conversation?
A. No, sir.
Q. Okay.
A. That was it.
Q. What plans did you have for Sunday, September 30th, 2001?
A. Originally, I had planned to go out of town for the weekend. But like I said, I told him that I wasn't feeling well, so I went to the doctor's on Saturday.
Q. But your plans were to go out of town?
A. Originally, yes, sir.
Q. All right. But when you told Mr. Grado that you had plans, those were the plans you were talking about, going out of town?
A. Originally, they were. Originally, they were to be of town. But then I wasn't feeling well all that week, so I was going to go to the doctor and postpone my plans.

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Q. Okay. When did you postpone your plans?
A. Oh, Saturday. I mean, later, like Friday when I wasn't feeling well, I didn't go.
Q. Okay.
A. I still wasn't feeling well, so I didn't go. I didn't pursue my plans.
Q. All right. Your original plan --
A. Was to go out of town.
Q. And I'm talking about the plans that you told Mr. Grado that you had. Is that the plans you're talking about?
A. The plans that I told Mr. Grado?
Q. Correct.
A. The plans that I told -- I told him that I had plans.
Q. Okay.
A. My original plans was to go out of town.
Q. All right. Let me stop you there.
A. Okay.
Q. Where were you going?
A. Las Cruces.
Q. For what purpose?
A. To meet some friends.
Q. Okay. What friends?
A. Some friends of my cousin.

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Q. Who is your cousin?
A. Aaron.
Q. Aaron. What is his last name?
A. Thomas.
Q. Where does he live?
A. Albuquerque, New Mexico.
Q. Okay. Aaron Thomas?

A. Yes, sir.
Q. All right. Was Aaron going with you?
A. Yes, sir.
Q. Okay. Was anybody else going with you?
A. No, sir.
Q. And who were the friends you were going to visit in Las Cruces?
A. Actually, they were friends of his, and I was going with him.
Q. Who were these people you were going to see?
A. One's name was Monica, and I can't think of the other one's name.
Q. Monica is a female?
A. Yes, sir.
Q. You don't remember her last name?
A. No, sir.
Q. Was the other person a female or a male?
A. Yes, sir, female.

* * *

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name.
Q. You mean a person or a hospital or clinic?
A. No' it's -- I can't think of it. I know where it's at, but I can't think of the name right now.
Q. Where is it?
A. It's off the freeway, right next to -- let me think. Down there by Petsmart, that big building down there. I can't think of the name, I can't think of what it is. Blue Cross Blue Shield.
Q. Okay. What does she do there?
A. She's on the computer, I guess, whatever they do with claims or whatever.

Q. Okay. How long has she been working there?
A. I don't know how long.
Q. A few months, or longer?
A. Oh, no, longer than that, yeah.
Q. Okay. What's her telephone number?
A. 270-3537.
Q. Is that home?
A. Cell number.
Q. Okay. Does she have a home line?
A. Yes. I have it programmed in my phone. I don't know it off the top of my head, her house number.

Q. Okay. Do you usually communicate with her by cell phone?

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A. Yes, sir.
Q. After September 28, 2001, when was your next communication with Mr. Grado?
A. After -- excuse me?
Q. After your conversation with Mr. Grado on September 28, 2001, when was your next communication with Mr. Grado?
A. That Monday.
Q. October 1, 2001?
A. Yes, sir.
Q. Where were you?
A. At work, at a meeting for -- a health meeting, if I'm not mistaken.
Q. This is at the plant?
A. Yes, sir.
Q. Did you work Monday, October 1?
A. Yes, sir.
Q. Did you do your merchandising that day?
A. Yes, sir.

Q. All your stores?
A. Yes, sir.
Q. That morning, you just had a meeting regarding some health issues?
A. No, it wasn't that morning. It was that evening.

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Q. All right. I'm sorry.
A. I worked all day.
Q. You worked all day?
A. I worked from 5:00, if I'm not mistaken, until 5:00.

Q. Okay. And then you went to a meeting?
A. Yes, sir.
Q. All right. What kind of meeting was it?
A. I think it was for health insurance, if I'm not mistaken.
Q. Okay. And this is back at the Coca-Cola facility?
A. At the plant, yes.
Q. And you saw Mr. Grado there?
A. Yes, sir.
Q. All right. Did you talk to him by phone that day, October 1, 2001?
A. I can't recall that I had. Huh-uh, no, sir, I don't think so.
Q. All right. Did you have a conversation with Mr. Grado that evening?
A. Yes, sir.
Q. Tell me the substance of the conversation.
A. I was sitting in the meeting, and Mr. Grado walked up to me and said, "I need you to be down at the

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plant at 8:00 in the morning."
And I said "Okay."

Q. Okay.
A. And that was it.
Q. That was it?
A. Uh-huh.
Q. Did he tell you why?
A. He didn't tell me why, no, sir.
Q. Did you ask why?
A. I didn't ask why, no. He just said to meet him at the plant. He walked by and he stopped. It was during the meeting.
Q. Okay.
A. He just told me, "Meet me down at the plant at 8:00 tomorrow morning."
Q. What did you say?
A. I said "Okay," and he walked away.
Q. Okay. Anything else involved in that conversation?
A. No, sir.
Q. All right. Did you talk to Mr. Grado on any other occasion that day, October 1, 2001?
A. I can't recall.
Q. Did you talk to Mr. Grado on Saturday, September 29th, 2001?

* * *

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Q. And again, we're talking Friday, the 28th of September 2001. When you told Mr. Grado you had plans, did you tell him those plans were to go visit these two girls in Las Cruces?
A. No, sir.
Q. Okay. Have you seen a physician since September 29, 2001?
A. September 29, 2001. Not that I recall.

Q. You've got Exhibit 3 there, the Complaint in this case. Do you understand that the EEOC in this lawsuit is claiming that you were terminated from your employment because of your race?
A. Yes, sir.
Q. Do you have any evidence that you were, in fact, terminated because of your race or the color of your skin?
A. Yes, sir.
Q. Okay. What is that evidence?
A. That no one else, no non-Afro-Americans have been treated as I have been treated, as far as none of them got terminated for calling in sick. And other Afro-Americans had made other complaints against Mr. Grado.
Q. Okay. Any other evidence?
A. I can't think of none at this time.
Q. Okay. So the evidence you have are two parts --

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and I want you to tell me if I'm saying this correctly, because I want to make sure I understand -- that non-African-Americans were treated differently because they were not terminated for calling in sick; is that what you told me?
A. Now, what's that again? How did you say that?
Q. I asked what the evidence was that your termination was because of your race, and I think one of the things you said was because non-African-Americans were treated differently because they were not terminated for calling in sick.
A. Yes, sir.
Q. Okay. Did I state that correctly?
A. Yes, sir.
Q. And then the other piece of evidence that you said supports that claim is that other African-Americans were treated poorly by Mr. Grado?
A. Yes, sir.

Q. All right. What non-African American employees were treated differently by not being terminated for calling in sick?
A. You mean names?
Q. Yes.
A. James Young.
Q. Okay.

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A. I mean, are you asking me as far as like, you said not calling in sick. I mean, I'm saying -- the names that I'm giving you all have problems with Mr. Grado.
Q. Okay.
A. Do you understand what I'm saying?
Q. I don't think you and I are talking about the same thing, so let me start over.
A. Okay.
Q. Which non-African-American employees at Coca-Cola were treated differently?
A. Were treated differently as far as didn't get treated as bad as I did; is that what you're asking me?
Q. Correct. I'm going back to, I asked you, you know, for the evidence to support that claim, and you said that non-African-Americans were treated differently.
A. Yes.
Q. And I'm asking you, who are those people?
A. Damian Mirabal, Arturo Lopez -- let me think. Kelly Sage, let me think here for a minute. I can't think of any more at this time. There is more, but I can't think right off the top of my head their names.
Q. Damian Mirabal, Arturo Lopez and Kelly Sage?
A. Uh-huh.
Q. Yes?
A. Yes. I'm trying to think of -- there's more,

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but I can't think of them right off the top of my head right now.

Q. Okay. Well, do you need a minute to think about it?

A. Yeah. Can I have one minute?

MR. PRESNELL: Sure. Do you want to take a break to think about it for a second? I could use some water, anyway, so why don't we do that.

(A recess was taken.)

A. Okay. Monica Lovato.

Q. (By Mr. Presnell) Monica Lovato?

A. Yes, sir.

Q. Is that it?

A. There's more, but I can't -- let me think here. That's all that I can recall.

Q. Okay. What position did Mr. Mirabal have?

A. Merchandiser.

Q. All right. What about Mr. Lopez?

A. Merchandiser.

Q. Mr. Sage, what was his position?

A. Truck driver.

Q. Truck driver?

A. Yes, sir.

Q. Is that different from a merchandiser?

A. Yes, sir.

EXHIBIT F

EXCERPTS OF DEPOSITION OF PATRICIA K. EDGAR

[p.38]

Q. And so after that conversation, did you talk to Grado on Friday?
A. No, I don't believe so.
Q. Did you talk to anybody on Friday concerning Mr. Peters?
A. I might have talked to Sherry.
Q. You might have? You're not too sure?
A. I don't remember if I talked to Sherry. My recollection is I talked to Sherry late on Friday, more towards 4:00 or 5:00 p.m., and/or it could have been Monday, but . . .
Q. So on Friday you made the decision that Mr. Peters had been insubordinate?
A. On Friday there was sufficient evidence that he was insubordinate.
Q. Based on what Grado told you?
A. That's right.
Q. And on Friday, you hadn't talked to anybody about Grado?
A. That's correct.
Q. And what does it mean that you had sufficient evidence on Friday?
A. Well, if I, in fact, did talk to -- well, evidence that he refused to try calling, evidence according to Grado.

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Q. Sufficient evidence to terminate Mr. Peters?

A. Yes, that was sufficient that he violated the insubordination rule.
Q. So after you talked to Grado, was that sufficient evidence to terminate Peters?
A. Yeah. I felt that actually had happened, and I believed Mr. Grado, if that's your question.
Q. Why did you believe Mr. Grado?
A. Why did I believe him?
Q. Yes, ma'am.
A. Because he had just gotten off the phone and gotten back on with me, and he was just very credible, and I did believe him.
Q. Is he very credible to you?
A. Are talking about in general?
Q. In general, do you find Mr. Grado to be very credible?
A. Yes.
Q. Okay. So had you ever talked to Mr. Peters -- I understand you never met Mr. Peters; is that correct?
A. Yeah.
Q. You don't know who this guy was?

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A. Right
Q. Had you ever talked to him on the phone?
A. I don't believe so.
Q. Okay. Had you ever heard anything about Mr. Peters prior to this conversation with Grado on Thursday, Friday?
A. Not that I recall, no.
Q. Okay. So you had no basis to say that Mr. Peters could not be credible?
A. Mr. Peters?
Q. Yes.
A. Yeah. I wasn't thinking that Mr. Peters was not credible.

Q. you just thought that what Mr. Grado said happened, happened, and you were good with that, and you made your decision that Mr. Peters was insubordinate?
A. That's not when I made my decision.
Q. When did you make your decision?
A. I believe I talked to Sherry on Friday afternoon.
Q. Okay. So after you talked to Sherry, you made your decision?
A. Yes, pretty much.
Q. What did you talk to Sherry about?

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A. I want to clarify whether I talked to her on Friday afternoon. My recollection is it was Friday afternoon or Monday. But when I talked to Sherry, I asked her to pull the file. And what Cesar Grado had related to me regarding Mr. Peters and the conversation he had with him, there was a similar incident in the file from 1999 with a whole different set of players that added credibility to Mr. Grado's recount of what also had happened.
Q. Okay. So you spoke to Sherry Pederson, who relayed some information to you. And based on what Sherry Pederson told you in that conversation, that's when you -- after you received that information, that's when you made your decision?
A. Well, I believe that we had a talk on Monday. So it's not as if -- I still -- I had the information, but I can't tell you 100 percent when I made the decision. I can tell you that there was sufficient violation of policy on Friday.
Q. So why wasn't he fired on Friday?
A. I think he was at home.
Q. He didn't work Friday?
A. No. I think he had already gone home.
Q. So it was Friday at what time?
A. I think they get off at 2:00 or 3:00. I

EXHIBIT G

EXCERPTS OF DEPOSITION OF SHERRY L. PEDERSON

[p.30]

position, Senior HR Administrator in 2001; is that correct?
A. Yes.
Q. Okay. What kind of information would be brought to you in this assisting with the discipline process?
A. Whatever the issue was with the employee. It could be anything.
Q. Did you ever receive any recommendations for managers with regard to discipline?
A. Sometimes.
Q. But these recommendations were subject to your approval?
A. Yes.
Q. What management positions -- did you ever receive any recommendations from district sales managers?
A. Not specifically, that I can recall.
Q. Okay. And once you received the information -- just generally we're talking about the process -- what would you do with the information?
A. I would then determine, according to our policies and rules and regulations and our discipline -- progressive discipline procedures,

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what rule, regulation or policy may have been violated. And if I felt I had all the facts, then would determine what type of discipline would be taken.

Q. Was your determination as to the type of discipline to be taken subject to anybody else's approval?
A. If it was a possible termination, all terminations would go through Pat Edgar.
Q. So you would make a recommendation to Ms. Edgar with regard to discipline that involved terminations?
A. I would give her my opinion, yes.
Q. How would you go about -- what would cause you to feel that you had all the facts to allow you to make the determination concerning discipline?
A. I rely on management to give me those facts, but if there was someone else involved that I felt I needed to go back and get more information from, I would do that.
Q. Okay. Someone else, could that someone else be the employee in question?
A. It could be, or a witness.
Q. Do you have a sense of whether you ever did go the employee or to a witness after you

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received facts from a manager concerning discipline where you did go to a witness or the employee?
A. I don't remember a special instance, but yes, I'm sure I have, yes.
Q. Okay. And when you had done that, would you make any record of interviewing individuals or talking to individuals, nonmanagement individuals?
A. Sometimes.
Q. What factors would you -- strike that. Why would you sometimes and not sometimes?
A. Depending on the information you got from a witness or employee, him or herself related to the case, you wouldn't necessarily record the information, it just depended how it related to the case?

A. Each case was looked at individually, and that's the best answer I can give you.
Q. Okay. And we're going to go through some of those disciplines.
A. Okay.
Q. I will ask you specifically. That may be a better way to go through to figure out this process.

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Just generally, how was the information presented to you by the managers with regard to discipline issues?
A. Sometimes it was verbally. And sometimes they would, you know, write it down or type it up, some of the basic information.
Q. Okay. And then after -- say you got information that was written down -- say you got information that was verbally presented to you. Would you make any record of that information that was presented to you verbally?
A. It depends on the case.
Q. Okay. What about a case would cause you -- is there anything in particular about a particular case that would cause you to record verbal information presented to you?
A. I can't think of an example.
Q. Okay. Would the severity of the discipline at issue or the severity of the conduct at issue that was brought to your attention, would that have any bearing on whether you recorded information presented to you verbally?
A. It may.
Q. Okay. So severity of the violation?
A. It may.

EXHIBIT H

EXCERPTS OF DEPOSITION OF CESAR M. GRADO

[p.30]

Q. -- is that correct?
A. Yes.
Q. Okay. And if that employee does not do that which has been asked of him, that could be insubordination.
A. And I said no.
Q. And I asked why.
A. Because I did not explain to the employee that it was a directive, He was not being told.
Q. Okay. So -- okay. So he's not being told what?
A. He's not being given that direct order. He's not -- if I sit and say, "I am giving a directive to answer my page. If you do not answer this page, that could be considered insubordination," then it could be considered insubordination when he does not answer the page.
Q. So if you -- if you -- if you're telling an employee to do something and you put it in terms of, "This is, this is a directive, and if you don't do this, it's insubordination" --
A. It could be.
Q. -- that's different from an employee -- "I'm telling you to do something. Do it"?
MR. PRESNELL: Object to the form.

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A. It could be. I would put it in front of HR. and they would make that decision for me.
Q. Before what point? What decision would HR make?

A. Before any -- anything is -- any action is taken, before it's considered insubordination. I don't -- I don't -- I don't make those decisions. HR makes those decisions, not me.
Q. Whether -- whether somebody is to be considered as being insubordinate --
A. Yes.
Q. -- with regards to the workplace --
A. Yes.
Q. -- rules is not your decision?
A. That's not my decision.
Q. Is it your -- is it within your authority to tell somebody that if they don't do -- if they don't follow your directive as their manager, that it's insubordination?
A. It could be considered insubordination.
Q. Could be?
A. Could be, yes.
Q. Not that it would be?
A. Not that it could be -- would be. I mean, I gather the facts and I present them to our HR

[p.32]

department, and they decide whether it is an insubordination or not and whether there's action to be taken or not.
Q. We'll come back to that. We can clarify the record as to your response, sir. How about a failure to respond -- we're going back to a supervisor's page, okay? After a supervisor makes several attempts to get a hold of employees' what do you consider that?
A. I don't know. I don't know what that would look like. Again, I will put the facts in front of HR, and we -- they would make the decision -- not me. But that's all I would do is put it in front of HR, Sherry Pederson or Pat Edgar.
Q. How about an employee who does not return to work when he's told to return to work, is that insubordination?

A. Again, I don't know. I don't know.
Q. How about an employee not following written instructions given by a supervisor, is that insubordination?
A. It could be. It could not be. I mean --
Q. What wouldn't make it --
A. I would present the facts to HR and go from there.
Q. What would make it insubordination, when you

[p.33]

say it could be?
A. We -- I -- HR considers insubordination when they are given a directive, and they have understood they have been given a directive, and that is explained to them before they even -- or if I ask you to do a directive -- you know, "I'm asking you to do a directive because I just explained that to you, and if you don't do it, that could be considered insubordination. Do you understand what I'm telling you," and you as an employee either understand or you don't understand.

And if you don't understand it, my job is to make sure you understand. That's being clear. Communication has to be clear. "If you don't understand what I'm asking, you better ask me to be clear or ask me what it is that I'm asking so I can be clear. But once we establish what it is we are asking you to do" --
Q. Going back to my original question, with regards to an employee not following written instructions given by a supervisor, and you said that that could be insubordination, why could that be insubordination?
A. It could be considered insubordination.
Q. Why?

* * *

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A. HR.
Q. Who is HR?
A. Sherry Pederson.
Q. Have you ever had a decision -- have you ever had a recommendation to hire somebody who was not approved by HR?
A. That happens all the time.
Q. It happens all the time?
A. Yes.
Q. When was the last time it happened?
A. Just recently. I don't know exactly.
Q. When recently?
A. I don't know. Just been recently.
Q. In the last week?
A. No.
Q. Last month?
A. No.
Q. In the last six months?
A. Yes.
Q. Okay. So the last six months you made a recommendation to HR. --
A. Uh-huh.
Q. -- on a candidate for a position?
A. Yes.
Q. What position was it?

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A. Merchandising.
Q. And HR did not approve your recommendation?
A. HR did not approve, yes.
Q. Do you know why?

A. I did not get the specifics. I'm not privileged to that information.
Q. Okay. In the last year, other than this one, has there been anybody else?
A. Yes.
Q. Who?
A. I don't know, but there has.
Q. How many others?
A. I couldn't be specific.
Q. Okay.
A. There's so many people that come through Coca-Cola, so -- I mean --
Q. But in the last --
A. -- a lot of people.
Q. In the last six months, one of your recommendations was turned down?
A. It was more than.
MR. PRESNELL: Object to the form.
Q. It was more?
A. Yes.
Q. How many more?

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A. I don't know how many.
Q. Okay. And who in HR is the person who approves your recommendations? Is that Sherry Pederson?
A. Uh-huh.
Q. Is that right?
A. Uh-huh.
Q. Does she have final authority to approve your recommendation?
A. Yes, she does.
Q. Who is her supervisor?
A. Now?

Q. Yes.
A. I believe her name is Tammy Erickson.
Q. Okay. And you said that you've also made recommendations to Pat Edgar concerning people you want to hire.
A. No, I've never made a recommendation to Pat Edgar.
Q. You have not?
A. No.
Q. With regard to hiring employees, have you ever had any reason to work with or through Pat Edgar?
A. One more time? I'm sorry.
Q. Okay. I will rephrase it. With regard to

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your authority to the extent that you have described to hire employees, have you ever worked with Pat Edgar?
A. Not that I remember.
Q. Okay. Okay. With regard to your authority to -- do you have the authority to fire individuals?
A. No.
Q. You have no authority to fire?
A. No.
Q. At all?
A. At all.
Q. Do you have the authority to make recommendations to fire people?
A. I could make recommendations.
Q. What do you mean you could?
A. I -- I simply put facts together and put them in front of HR. You know, if somebody hits me across the head, for example, I mean, that's horrible, so I make a recommendation. But I, don't have the authority.
Q. You don't have the authority to do what?
A. To terminate.

Q. Let me make sure I understand it; sir. The extent of your authority with regards to terminating an employee's employment, somebody's employment with Coca-Cola, what is the extent of your authority?

* * *

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for Sunday.
Q. Okay. So at the second -- are you -- before he said, "I have plans," the second time, he started yelling at you?
A. Could have been, yes.
Q. Okay. So he was yelling at you. So he was pretty much yelling at you. He had already yelled at you when you asked him if he could change -- if he could change from Sunday to work Saturday since he had plans on Sunday.
MR. PRESNELL: Object to the form.
Q. He was -- he had already been yelling at you?
A. He could have been, yes.
Q. Was he already yelling at you?
A. He could have been.
Q. You don't know for sure?
A. I don't know. I don't remember exactly when he started raising his voice.
Q. Okay, so he wasn't yelling. So are you saying -- are you saying raising his voice or yelling?
A. At one point he was yelling.
Q. At what point was he yelling?
A. Okay. When I asked him if he could change his plans.
Q. Okay. When you asked him that, then he

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started yelling?
A. He was yelling.

Q. Okay. What was he yelling?
A. He was just answering my questions.
Q. Okay. What did he say?
A. At what point?
Q. In response to that question.
A. When?
Q. When you asked him about changing from Sunday to Saturday.
A. I believe he said no.
Q. Okay. What else did he say?
A. I asked him what his plans were.
Q. Okay. And what did he say?
A. He said it was none of my business.
Q. Okay. And then what happened?
A. And then I explained to him that I was not asking him to report to work on Sunday, that I was giving him a direct order, and failure to follow a direct order would be considered insubordination, and that would be grounds for termination.
Q. Did you say would be or could be considered?
A. It would be considered insubordination, and that those are grounds for termination.
Q. And then what happened?

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A. He told me that I can do whatever I needed to do. He was going to do whatever he needed to do. And he said, "You do what you got to do. I will do whatever I got to do."
Q. And then what happened?
A. I hung up the phone. We hung up.
Q. Who hung up first?
A. I don't remember.
Q. And then what happened?

A. Monday morning I got in front of Sherry Pederson and walked her through the whole fact -- the facts of Friday afternoon. And Pat Edgar was already involved by that time, so they had a discussion and they decided that this was insubordination, and they decided it was a termination.
Q. Okay. So after you hung up with Mr. Peters on Friday 9-28, did you then talk to Ms. Edgar?
A. Yeah, I think I did. Yes, I did.
Q. And when you talked to Ms. Edgar on that Friday, what did you tell her?
A. I told her exactly what had happened.
Q. What did you tell her?
A. That I had called Stephen Peters, and I explained to Stephen Peters how I was giving him a direct order, by her advice, and -- and what the

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conversation entailed, that he told me I had to do what I had to do, and he would do what he had to do.
Q. Okay. So you first spoke to Mr. Katt?
A. Yes.
Q. And then who did you speak to?
A. I talked to Pat Edgar.
Q. Pat Edgar. And what did you tell Pat Edgar the first time you spoke with her?
A. I called Pat Edgar and asked for advice. I let her know what was going on.
Q. What did you let her know?
A. I explained to Pat Edgar how Stephen Peters had agreed to work on Sunday, and I asked Pat Edgar if there was a -- if we can ask employees to work overtime, or if we were not allowed to ask employees to work overtime.
Q. What else did you tell her?

A. She asked me if I had explored all avenues as far as getting help for the weekend. And I had already asked for help, and I didn't have anybody else to go to but to Stephen Peters. So under her advice, she -- she went ahead and gave me the advice on how to explain to Stephen Peters that I was giving him a directive, and that how following -- not following a directive would be considered insubordination.

EXHIBIT I

EXCERPTS OF DEPOSITION OF JEFF KATT

[p.26]

like 6:00. I can't remember the specific time. And after paging a couple of times, I didn't want to keep paging through the whole night just to let him know when we already had kind of a plan to cover that territory anyway.
Q. So you tried to page Cesar Grado on Saturday night after Mr. Peters called you?
A. Yeah, I believe I did.
Q. -- And you believe it was one or two times?
A. Yes.
Q. And Mr. Grado never called you back on Saturday?
A. Correct.
Q. And you said -- I believe you said, which was not an unusual thing for Mr. Grado to do, not to return his pages; is that right?

MR. PRESNELL: Object to the form.

A. On the -- on a weekend or something like that, if it was towards the end of the night when the day was already covered, a lot of times whatever the emergency was or situation could be could probably be handled the next day. So sometimes pages wouldn't be returned. I mean it wasn't too uncommon if that happened.
Q. (By Ms. Molina) So you're saying that it

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wasn't unusual for Mr. Grado not to return a page or a call because routes or jobs or work was already covered?
A. Correct.

Q. Okay. Did you have any code to let him know on the page -- if you sent him a page, say, Saturday night, when Mr. Peters called you, did you have any code that you could enter on the pager to let him know it was an emergency, that he needed to contact you?
A. The only way we would communicate through emergency, you know, if it was really important, just to put a 911 at the end of the page.
Q. Did you put a 911 at the end of your pages to Mr. Grado that night?
A. Not that I can recall.
Q. Why not?
A. I just didn't feel it was an emergency if the route was already going to be covered.
Q. Okay. When was the -- so you're saying that the route for Sunday, September 30th, 2001, was already covered?
A. I believe so, yeah.
Q. And that was the route that Mr. Peters had called in sick -- had called you to let you know

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that he would not be able to work; is that correct?
A. Correct.
Q. And how do you know that the route was covered?
A. I communicated with Cesar earlier that day or on Friday we had worked something out on what we would do to cover that route.
Q. At what point in the day on Friday? Now we're on September 28th, 2001; is that right?
A. Okay.
Q. Friday, September 28th. At what point on September 28th was the coverage for the route taken care of?
A. At what point was it taken care of? It was probably, I would guess, say, around 5:00 or 6:00.

Q. Who had the responsibility to make up the schedule?
A. Cesar.
Q. And this was done on a weekly basis?
A. Yes.
Q. So the schedule for the week ending September 28th, 2001, would have been prepared when?
MR. PRESNELL: Object to the form.
Q. (By Ms. Molina) September 28th 2001, was a

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Friday. So do you know when the schedule for the week ending September 28th would have been prepared?
A. For the next week?
Q. For that week ending September 28th.
A. That would have been taken care of last week, the week -- that Sunday.
Q. On Sunday?
A. Yeah.
Q. So on Sunday the schedule for the week is prepared?
A. Actually, I think he would try to get it done -- there were times that he got it done earlier, there were times he got it done later, I'm not specifically sure when he would prepare it. Like sometimes we would have schedules on Friday for the next week, sometimes we wouldn't have them until Monday.
Q. So on the schedules -- on the schedules that would be prepared either on Friday or Monday for that week, the week following that Monday, what -- would the schedule include any overtimes, any employees who were scheduled to work overtime?
A. Sometimes they would, but for that specific week, leading up to that week, there was not, I don't believe.

* * *

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Q. So was this schedule posted anywhere at the facility to let employees know what their work schedule was that week?
A. I don't know if it was posted.
Q. Do you know how employees would know or merchandisers would know what their schedule was for the week?

A. Typically I would get them from Cesar and hand them out to the employees on my list.
Q. This particular schedule --
A. Yes.
Q. -- for that week? So you would give the schedule to the merchandisers --
A. Yes.
Q. -- under your supervision?
A. Yes.
Q. If there was a change to the schedule, would that change be noted on the schedule?
A. If there was a change, I would typically have to call a merchandiser or that sort of thing and let him know, because typically they wouldn't be reprinted.
Q. Okay. So with regards to Mr. Peters, you had said -- you had testified that there had been something worked out at around 5:00 or 6:00 on that

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Friday. That's the 21st, is that correct -- or the 28th; is that correct?
A. Yes.
Q. If you're not too sure of the dates, I can tell you there's been -- it's been established that Friday was the 28th, 29th, and then 30th.

A. Okay.
Q. So how is it that Mr. Grado came to you on Friday at around 5:00 or 6:00 to talk about working out something for Sunday, or how is it that it came to be that something was worked out?
A. I believe he came to me and we had talked about working something out to get that route covered. I can't specifically remember how. I think it involved me going out there and maybe covering something, but I can't remember specifically how we rerouted everything.
Q. Did you have -- did you contact Mr. Grado on Friday concerning the schedule for Sunday other than at the end of the day around 5:00 or 6:00? Did you have any contacts with Mr. Grado concerning the schedule for Sunday?
MR. PRESNELL: Object to form.
A. Just that when he called me to ask Steve -- tell Steve to work on that Sunday.

[p.40]

Q. (By Ms. Molina) So Mr. Grado called you?
A. That's correct.
Q. On?
A. On Friday.
Q. When on Friday?
A. I would say it was probably around 2:00.
Q. Had Mr. Grado called you at any other time concerning Mr. Peters working on Sunday?
A. No.
Q. When Mr. Grado called you, what did he say to you?
A. He said, "We're going to be short someone, and I need -- tell Stephen Peters he has to work on Sunday." I'm trying to recall the conversation to the best of my ability. Its been a little while. But he said something to the effect of -- I had kind of had a conversation with him at that point and said,

you know, "I think he worked the prior Sunday or something." He had worked six days. And I said, you know, "He's not going to work six days this week." And he said, "Tell him he has to. I'm not giving him a choice." He kind of made a statement about how -- let him know that if he doesn't work, that he can have his days off reassigned, that I can reassign his days off. At that point I called

[p.41]

Steve.

Q. And what did you tell Steve?

A. I said, "Steve, I need for you to work on Sunday. We're short people."

Q. And what did Mr. Peters say?

A. He said, "I can't do it. I've got plans."

Q. And then what happened? Did he say anything else?

A. We just -- I mean there might have been casual talk. I can't remember. But where it ended, basically, is he was going to call Cesar.

Q. Did you ask Mr. Peters to call Mr. Grado?

A. No.

Q. Did Mr. Peters say that he was going to call Mr. Grado?

A. Yeah. I can't remember if I asked him -- I don't think I did.

Q. And your recollection is that this was around 2:00 in the afternoon?

A. Approximately.

Q. Why do you think it was 2:00 in the afternoon?

A. Because it was towards the end of the day.

Q. Towards the end of your workday?

A. Exactly.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Civ-02-1644
JOB/RHS

[Filed March 19, 2004]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,	)
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, d/b/a PHOENIX COCA-COLA BOTTLING COMPANY and COCA-COLA BOTTLING COMPANY OF ALBUQUERQUE, Defendant.	)

EXHIBITS TO PLAINTIFF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Respectfully submitted,

Mary Jo O'Neill
Regional Attorney

C. Emanuel Smith
Supervisory Trial Attorney

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Phoenix District Office
3300 N. Central Ave.
Suite 690
Phoenix, Arizona 85012
/s/
VERONICA A. MOLINA
Trial Attorney

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Civ-02-1644
JOB/RHS (ACE)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,	)
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, d/b/a PHOENIX COCA-COLA BOTTLING COMPANY and COCA-COLA BOTTLING COMPANY OF ALBUQUERQUE, Defendant.	)

AFFIDAVIT OF
STEPHEN B. PETERS

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, Stephen B. Peters, duly sworn, hereby state as follows:

1. During my employment with Coca-Cola Bottling Company of Albuquerque, I was never written up for job performance problems, nor attendance problems.

2. During my employment with Coca-Cola Bottling Company of Albuquerque, I was considered a good merchandiser at stores under my responsibility. Attached hereto as Attachments 1 and 2 are letters of recommendation.

3. In the year 2001, I was awarded a certificate from Coca-Cola Enterprises for my five years of "service, dedication and commitment to the company." Attached hereto as Attachment 3 is copy of the certificate.

4. During my last full week of employment at Coca-Cola, I worked from Sunday,

5. I did not receive a "final warning" in 1999.

6. When I told Cesar Grado to "do what he got to do and I'll do what I got to do" I meant was to end the conversation as far as getting into any confrontation with Mr. Grado.

7. Because I was still not feeling well on Saturday, September 29 and Sunday, September 30, 2001 I stayed home the entire weekend to get better so that I could return to work on Monday, October 1, 2001.

8. Jeff Katt worked on Monday, October 1 and Tuesday, October 2, 2001.

9. In the year 2001, I worked under the immediate supervision of Jeff Katt, Account Manager, who supervised my work on a day to day basis up until I was fired on October 2, 2001.

10. Up until my termination from Coca-Cola in October 2001, I had never been fired from any of my previous jobs.

11. African American employees were treated worse by Cesar Grado as compared to non-African American employees.

12. During my employment with Coca-Cola, I never knew of anyone other than the District Sales Manager to have the authority to discipline employees.

13. During my employment with Coca-Cola, I was never told that Human Resources staff had any authority to discipline employees.

14. During my termination on October 1, 2001 no one told me that Patricia Edgar had fired me.

15. During my employment with Coca-Cola, I never heard of Mr. Grado trying to find coverage for routes on a volunteer-basis and then by rotation. Mr. Grado just picked people to work.

16. During my employment at Coca-Cola, I complained to James Young on several occasions that I felt I was being treated differently because I was African-American.

17. During my employment at Coca-Cola, I do not remember receiving any training or instruction on race discrimination.

18. During my employment at Coca-Cola, I believed Cesar Grado had the authority to discipline employees, including firing employees.

19. When Coca-Cola was running ads in chain stores and extra coverage was needed, I would do extra stores and provide the coverage.

20. I believe that if Grado was going to be short one merchandiser the weekend of September 29-30, 2001 he could have denied Rivera's request to miss his regularly scheduled days if it was such a high volume.

21. During my employment at Coca-Cola, on numerous occasions I covered routes of employees who had called in sick or who didn't show up for work (no call, no show).

22. On Monday, October 1, 2001 when Arturo Lopez never showed up for work, I covered some of Mr. Lopez's route. I believe I asked Jeff Katt about Mr. Lopez and if he was coming to work that day, and I believe Mr. Katt said that Mr. Lopez was a no-call, no-show.

23. I was never asked to work on Saturday, September 29, 2001.

24. I was never given the option of working either Saturday, September 29 or Sunday, September 30, 2001.

25. I never told Jeff Katt that I was going to call in sick on Sunday, September 30, 2001.

26. I never told Jeff Katt that I could work on my days off on the upcoming weekend.

27. During my employment with Coca-Cola, if we were one merchandiser short, the available merchandisers would split up the stores needing coverage and cover the route. This happened numerous times.

28. On Friday, September 28, 2001 I told Cesar Grado I could not work on Sunday because I had plans and I was not feeling well. At no time did Mr. Grado ask me what my plans were, or about my not feeling well.

29. I never told Mr. Grado that I was refusing to work on Sunday, September 30, 2001. Mr. Grado never told me that my behavior was insubordination.

30. On Friday, September 28, 2001 I worked over eleven hours and I did not leave work at 2:00 p.m.

31. I share my home with my 84-year-old father.

32. I did not have an exit interview after I was fired from Coca-Cola.

33. In the year 1999, at 4:00 a.m. on a Wednesday I was notified that that my fiance's son and his uncle had been killed in a car accident. I paged Eddie Esq Esquibel immediately after to inform him that I did not think I would be able to report to work because of what had happened. Mr. Esquibel told me that he needed me to come in to work, and I proceeded to tell him that this was my fiancé of over four years and that she needed me. Mr. Esquibel asked me if I could go in for a few hours; and I told Mr. Esquibel that she was very upset and I didn't think that I could. Mr. Esquibel then said okay, take the day off. I took leave that day. I reported to work the following day and worked the full day. On Friday, I

reported to work and around midday on Friday, Mr. Esquibel told me that I had to work Saturday, my scheduled day off. I told Mr. Esquibel I could not because I was going to be a pall bearer at the funeral. Mr. Esquibel told me I had to come to work anyway. Mr. Donnelly, District Sales Manager, showed up at my store that Friday. When he came into the store I was working and when he saw me he yelled "Stephen Peters, outside now." When I got outside, I told Mr. Donnelly that I did not appreciate him yelling at me and embarrassing me in front of customers. He said that he had heard I could not work Saturday. I told him I could not because of I was going to be a pall bearer at the funeral. That's when he said, "was he your biological son" and I said he was not, but I treated him as if he was my son. Mr. Donnelly then said "I don't know what to tell you then, if he was not your biological son." Then I said to Mr. Donnelly that "if it was your fiancé of four plus years, and her son was killed tragically, God forbid, in a car accident, would you go to the funeral on your scheduled day off?" At that point he told me to go home, that I was being insubordinate. At no time did I curse at Mr. Donnelly' or Mr. Esquibel' nor did I raise my voice at them.

34. During my employment with Coca-Cola, I never missed a day from work for illness. The first day I was ever off on sick leave was the Wednesday when I notified Coca-Cola about my fiance's son. That was the very first time I had ever called in to report off work.

SUBSCRIBED AND SWORN to before me this 17th day of March, 2004 by Stephen B. Peters.

My Commission Expires:
12/12/06

/s/ _____
Stephen B. Peters

/s/ _____
Notary Public

OFFICIAL SEAL
Margie E. Sanchez
Notary Public
State of New Mexico
My Commission Expires 12/12/06

ATTACHMENT 1

October 8, 2001
To Whom It May Concern:

This letter of recommendation is for Stephen Peters. He was employed by Coca-Cola, and serviced us here at Raleys #803. He was always on time and took great care of us. Stephen would be a great asset to your company. If you have any further question feel free to give me a call.

Thanks,

/s/_____
Mike Cherry
Asst. Manager #803
505-292-1695

ATTACHMENT 2

ALBERTSONS #911
2801-A EUBANK BLVD. NE.
ALBUQUERQUE NM. 87112

AS A MERCHANT, PREVIOUSLY SERVICED BY STEVEN PETERS WITH COCA COLA, I GIVE REFERENCE TO THE JOB PERFORMANCE HE HAS PERFORMED IN MY STORE. THE JOB HE PERFORMED WAS AT THE UTMOST PROFESSIONAL LEVEL. I RECOMMEND HIM AS A VALUED EMPLOYEE WITH ANY ORGANIZATION HE SO CHOOSES TO BECOME EMPLOYED. STEVEN IS OF GOOD HUMOR AND GOOD WORK ETHICS. IF I CAN BE OF ANY FURTHER INFORMATION, PLEASE GIVE ME A CALL.

ALBERTSONS #911

/s/_____
PHIL STEPHENS
GROCERY MANAGER
505-298-7571

ATTACHMENT 3

Coca-Cola Enterprises

Thank You For Your
Years of Service

Coca-Cola Enterprises and the Phoenix Coca-Cola Bottling Company:

Thank you **Stephen Peters**, for 05 years of service, dedication, and commitment to the Company.

We sincerely appreciate your past contribution and look forward to the future with excitement. Thank you for being a team player for the World's #1 Beverage Company.

/s/_____ 11-7-01
Stephen Peters Date

Please sign and return to Human Resources for your file.

EXHIBIT B

Phoenix Coca-Cola Bottling Company
A COCA-COLA ENTERPRISES COMPANY

July 12, 2002

***Via Facsimile to* (505) 248-5239**

Geraldine Herrera
Federal Investigator
EEOC
Albuquerque District Office
505 Marquette, N.W., Suite 900
Albuquerque, NM 87102

Re: Stephen Peters v. Phoenix Coca-Cola Bottling Company EEOC Charge No. 390A20047

Dear Ms. Herrera:

In your final notice of Pre-Determination, dated June 19, 2002, you indicate that any material Respondent wishes to be considered should be submitted to you. Thank you for the opportunity to address the summary of information contained in your letter.

1. It is agreed that Mr. Peters is Black (African American) and a member of a protected class.

2. It is also agreed that Mr. Peters was qualified for his merchandiser position and his performance was satisfactory immediately prior to the events that resulted in his termination. He was not terminated on October 2, 2001 for unsatisfactory performance of his assigned job

duties, but rather due to his willful act of insubordination on September 30, 2001. His immediate replacement was Christopher Bolton.

3. Mr. Peters was terminated for his refusal to work a *scheduled* overtime day on Sunday, September 30, 2001. This was after his supervisor, District Sales Manager Cesar Grado, gave him a direct order to appear for his assigned shift and explained to Mr. Peters that failure to comply would be considered insubordination and would result in his termination. Respondent had every reason to believe that Mr. Peters understood this order.

   This direct order resulted from a report to Mr. Grado from Account Sales Representative Jeff Katt that Mr. Peters had told him that he did not intend to work on Sunday as *scheduled*. When Mr. Grado spoke with Mr. Peters on Friday, September 28, he simply said that "had other plans". When asked for a further explanation of why he did not plan to be at work, the Charging Party would not provide Mr. Grado with any specifics.

   On Sunday morning, Mr. Peters did not contact Mr. Grado prior to the beginning of his assigned shift. Instead, he contacted Mr. Katt to report that he was not coming to work since he was "sick".

   Mr. Peters had been specifically instructed to contact Mr. Grado at least a half-hour prior to the start of a scheduled shift if he was unable to report to work. Mr. Peters and the other merchandisers under Mr. Grado's supervision knew how to get in touch with Mr. Grado when they needed to. By purposefully not contacting Mr. Grado, Mr. Peters never gave him the opportunity to even consider his claim that morning that he was not able to

work due to illness. Perhaps Mr. Peters was concerned about how Mr. Grado would react after issuing a direct order to him and making it clear that non-compliance would result in his termination. Respondent's attendance policy states that misrepresenting a reason for absence is dishonesty and grounds for immediate termination. As a result of Mr. Peters' actions, Mr. Grado reached the reasonable conclusion that he had simply decided not to work as scheduled.

4. A review of the personnel files of Arturo Lopez and Damien Mirabal, both merchandisers who were also supervised by Mr. Grado, does not indicate that either employee ever engaged in conduct that was substantially similar to that exhibited by Mr. Peters on September 30, 2001. Specifically, to the best of Respondent's knowledge, neither employee has ever committed willful insubordination towards Mr. Grado or any other member of management. In the absence of such conduct neither employee should be considered a comparator to Mr. Peters for purposes of determining the existence of disparate treatment.

   Without evidence of treatment different than that received by other employees for substantially similar conduct, it should not be concluded that Mr. Peters was subjected to disparate treatment based upon his race. Mr. Peters was given a final warning by another Supervisor (not Mr. Grado) on September 17, 1999 for a similar work rule violation.

   Mr. Peters was told a week in advance that he would be scheduled an overtime day on the weekend of September 29-30, 2001. Mr. Grado actually gave Mr. Peters his preference as to what day he would prefer to be scheduled

and Mr. Peters selected Sunday, September 30. Mr. Peter's subsequent refusal to work on the day he selected was the direct basis for his termination.

The evidence clearly indicates that Respondent did not engage in disparate treatment or race discrimination in this matter. Mr. Peters alone determined the fate of his employment after being clearly apprised of what the consequences would be of his failure to follow the instruction of Mr. Grado.

The available evidence in this matter supports Respondent's conclusion that Mr. Peters violated an established rule sufficient to cause his termination. It is undisputed that Mr. Peters signed a copy of Respondent's Rules & Regulations, which also clearly state on the last paragraph of the front cover, *"management reserves the right to discipline according to the severity of the situation as deemed appropriate."*

Respondent requests that you review again carefully all of the documents previously provided and take this additional information into consideration before making a final Determination.

If you have questions, please contact me at (480) 345-3192.

Sincerely,

/s/ _____

Patricia K. Edgar
Employee Relations Manager
C: file
Attachment of Rules & Regulations on file with EEOC in this case

EXHIBIT E

CONFIDENTIAL EMPLOYEE
SUPPLEMENTAL DATA SHEET

TO BE COMPLETED BY NEW HIRES - RESUBMIT ONLY WHEN CHANGES OCCUR.

EMPLOYEE LAST NAME: Peters
FIRST NAME: Stephen
MIDDLE: B
SEX: M
DATE OF HIRE:
DATE OF BIRTH: 8/10/67
SOCIAL SECURITY NO.: XXX-XX-XXXX
WORK LOCATION:
JOB TITLE: CSA
EMPLOYEE NO.: 147213

LIST ALL DEPENDENTS - IF MORE ROOM IS NEEDED, LIST ADDITIONAL DEPENDENTS ON SEPARATE SHEET.

EMERGENCY NOTIFICATION DATA

NAME: Donald W. Peters
RELATIONSHIP: Father
ADDRESS: 208 Fentiman Pl.
CITY: Alb.
STATE: NM
ZIP CODE: 87105
TELEPHONE NO.: (505) 452-2593

EMPLOYEE DRIVER'S LICENSE DATA

STATE: New Mexico
EXPIR. DATE: 9/10/01
LICENSE NUMBER: 107715771
AFFIRMATIVE ACTION INFORMATION

The Company is required by Federal law to record and report affirmative action information regarding each employee. To assist us in this effort, please indicate below which group most correctly identifies you.

X Male

X Black

/s/_____
EMPLOYEE SIGNATURE

1/25/99
DATE

FOR HUMAN RESOURCES USE ONLY -

INPUT BY: BB
DATE: 2-18-99

CONFIDENTIAL EMPLOYEE
SUPPLEMENTAL DATA SHEET

EACH EMPLOYEE MUST COMPLETE AND RETURN BY MAY 1ST, 2000

EMPLOYEE LAST NAME: Peters
FIRST NAME: Stephen
MIDDLE: Brian
SEX: M
DATE OF HIRE: 5/95
DATE OF BIRTH: 8/10/67
SOCIAL SECURITY NO.: XXX-XX-XXXX
WORK LOCATION:
JOB TITLE: Merchandiser

LIST ALL DEPENDENTS – IF MORE ROOM IS NEEDED, LIST ADDITIONAL DEPENDENTS ON SEPARATE SHEET.

EMERGENCY NOTIFICATION DATA

NAME: Donald W. Peters
RELATIONSHIP: Father
ADDRESS: 208 Fentiman Pl.
CITY: Alb.
STATE: NM
ZIP CODE: 87105
TELEPHONE NO.: (505) 452-2593

EMPLOYEE EDUCATION LEVEL (PLEASE CHECK THE BOX THAT APPLIES TO YOUR SPECIFIC EDUCATIONAL HISTORY)

X HS DIPLOMA

NAME OF SCHOOL LAST ATTENDED: Octoraria
LAST YEAR ATTENDED: 1986

EMPLOYEE DRIVER'S LICENSE DATA

STATE: New Mexico
EXPIR. DATE: 9/10/02
LICENSE NUMBER: 107715771

ARE YOU CURRENTLY A MILITARY RESERVIST?

X NO

AFFIRMATIVE ACTION INFORMATION

The Company is required by Federal law to record and report affirmative action information regarding each employee. To assist us in this effort, please indicate below which group most correctly identifies you. Please check all that apply to you.

X Male

X Black

/s/ _____
EMPLOYEE SIGNATURE

4/24/00
DATE

EXHIBIT F

Phoenix Coca-Cola Bottling Company
A COCA-COLA ENTERPRISES COMPANY

April 24, 2002

Pat Trujillo, Federal Investigator
Equal Employment Opportunity Commission
505 Marquette N.W., Suite 900
Albuquerque, NM 87102

Re: Charge Number 390A20047 Stephen Peters

Federal Investigator Trujillo:

In response to your follow-up request for additional records, the following information is enclosed:

- Key for ethnic identification code
- Item 2 - Copy of Stephen Peters personnel file
- Item 3 - Current Albuquerque Employee Roll, pages 1 through 4
- item 8 - Copy of Arturo Lopez, Damien Mirabel and Kelly Sage personnel files
- Item 9 - Chris Bolton, individual who replaced Stephen Peters
- Item 10 - List of Merchandisers (point in time report 8/27/01) where Mr. Peters worked
- Item 11 - Merchandiser work schedule. Merchandisers were scheduled to work overtime days on regular scheduled days off in the following manner 1) by volunteer, 2) by rotation, 3) mandated.

- Item 12 - Cost Per Case Recap form, pages 1 through 60, 1/1/01 to present indicating work schedules, scheduled days off and days taken off.
- Item 13 - Also see Cost Per Case Recap for week ending 9/30/01 - DSM notes regarding need of scheduled coverage for route and Albertson's ad activity.
- Item 14 - District Sales Manager; Cesar Grado; and Account Managers' Ray Lucero and Jeff Katt carried out duties scheduled for Mr. Peters on September 30, 2001.
- Item 15 - termination records included in each personnel file (Item 2, Item 8).

If you have any questions, please call me at (480) 345-3192.

Sincerely,

/s/_____

Patricia K. Edgar
Employee Relations Manager

c: Dan Gilmore
File
Attachments

KEY ETHNIC ID

0 - CAUCASIAN
1 - BLACK
2 - ASIAN
3 - AMERICAN INDIAN
4 - HISPANIC

Current Albuquerque Employee Roll

Date: 04/24/2002

Loc: SPAAL

Complete name	Hire date	Position title	E ID	Grp
Blackman, Joel W	5/22/01	Intern Sales & Mktg	0	0
Dominguez, Frank L	3/05/85	Warehouse Supv (<5MM)	4	1
Graston, Jake H	8/30/00		0	
Baca, Karen M	6/18/00	Telemarketing Supv	4	
Lafferty, David A	7/17/95	Sr. Acctg. Mgr. (Albq)	0	
Bateluna, Donald R	8/23/79	Sales Manager	4	
Dodson, Robbin Dale	9/10/79	Sales Center Manager	0	
Schuler, Eva M	9/09/97	Office Supv	0	
Tollerud, Lori	7/17/95	Mgr Cold Drink Level	0	
Walter, William S	7/28/97	Market Level Mgr	0	

Complete name	Hire date	Position title	E ID	Grp
Mellen, Glen E	5/22/00	District Sales Mgr-Cold Drink	0	
Osborne, Terry A	9/27/99		0	
Waterman, Frederick V	3/17/97	District Sales Mgr	0	
Aranda, Martin R	8/15/94		4	
Grado, Cesar M	9/21/95		4	
Crowley, William B	6/03/95		0	
Swanson, Thomas E	1/09/02		0	
Connelly, Alberto J	6/01/68	Distribution Supv	4	
Gallegos, Ricky J	9/03/92		4	
Randazzo, Nicholas J	2/25/02		0	
Lucero, Jacob T	9/9/86		4	
Tanuz, Rory P	10/05/95		0	
Jury, Mitchell A	10/13/97	Distribution Mgr	0	
Potter, Jay H	4/02/98	Cooler Svc Supv	0	
Clifton, William	7/31/98		0	
Garcia, Rick J	10/30/00		4	
Johnson, Richard L	1/05/98		0	
Urrutia, Jorge A	3/23/92		4	
Jones, Shawn D	6/19/00	Cooler Svc Manager	0	
Pearson, Scott M	9/1/93	Area Manager	0	

Complete name	Hire date	Position title	E ID	Grp
Therrien, Jennifer L	10/30/00	Sr HR Administrator	0	2
Pedersen, Sherry L	1/04/00		0	
Stevens, Robert W	4/04/00	Sales Analyst Category Alb	0	
Zayas, Carlos M	11/02/98	Sales Analyst	4	
Young, Michael R	8/16/99	Inventory Control Analyst	0	
Collins, Diana J	1/02/90	Sr Telephone Sales Operator	0	4
Vigil, Amanda P	4/04/02		4	
Mora, Cordelia Y	10/11/95		4	
Montoya, Joanna M	11/04/97		4	
Wahlenmaier, Beth M	2/29/00	Sales Rep, 0 CD		
Narro, Martin E	1/19/95		4	
Olguin, Jeremy E	5/05/97		4	
Chavez, Marta Z	12/14/01		4	
Saavedra, April D	3/22/02		4	
Brown, Kelly K	3/22/02		0	
Mascarenas, Michael D	9/28/00		4	
Garcia, Leroy A	4/09/02		4	
Sopko, Rance D	6/14/99	Key Account Mgr	0	
Bauer, Amy P	2/10/97		0	

Complete name	Hire date	Position title	E ID	Grp
Endicott, James W	7/19/93	Channel Manager	0	
Varela, Danny A	10/04/99		4	
Griego, Gracie M	10/29/91	Account Manager	4	
Casados, Damian E	4/04/97		4	
Luna, Michael Z	8/02/94		4	
Trujillo, Amos S	7/14/94		4	
Lucero, Raymond A	6/24/98		4	
Katt, Jeff J	2/12/01		0	
McNutt, Jeffrey A	6/15/98		0	
Jacquez, Kenneth J	3/02/98		4	
Crespin, David A	2/26/98		4	
Kelly, Bobby I	7/15/99		1	
Henderson, Brian G	4/24/01		0	
Martinez, Sammy G	4/26/01		4	
Armijo, Tracee K	11/21/01		0	
Baca, Julian	12/01/94	Etail Space Rep	4	
Smith, Olesha D	2/05/01	Switchboard Receptionist	1	5
Eckstein, Judith L	3/01/01	Sr Executive Secretary	0	
Bloxham, Gail	2/25/02	Sr Clerk, Cooler Service	0	
Dueker, Linda L	11/23/87	Sr Accounting Clerk	0	

Complete name	Hire date	Position title	E ID	Grp
Trujillo, Elizabeth A	8/02/93	Lead Clerk Cooler Service	4	
Grange, Elizabeth G	6/6/94		4	
Santillanes, Suzanne C	11/21/00	Inventory Control Asst	4	
Hart, Kimberly S	5/30/01	Human Resources Clerk-Sr	0	
Smith, Michael D	10/27/97	Dispatcher	4	
Rios, Anthony F	11/17/00	Checker	4	
Zamora, William	11/21/00		4	
Ortega, Chris P	2/03/00		4	
Enright, David E	10/26/01		0	
Santillanes, Leo	9/26/00		4	
Mathias, Chris N	10/25/00		0	
Upshaw, Janet C	2/24/92	Cashier	0	
Gililland, Kevin L	9/23/85	Lead Fleet Mechanic	0	6
Aragon, Alex R	7/17/95	Cooler Svc Tech III	4	
Arient, Glenn M	7/11/00		0	
Moya, Mario D	10/25/00		4	
Payne, Kris M	2/29/00		4	
Sanchez Jr, Richard E	3/07/00		4	
Sanchez, Kevin E	9/10/99		4	
Ayala, Hector M	2/11/98		4	

Complete name	Hire date	Position title	E ID	Grp
Ortiz, Frank A	9/05/00		4	
Moya, Ricky J	7/09/01		4	
Casares, Erik A	9/04/01		4	
Campbell, Matthew S	3/27/02		0	
Ibarra, Fabian	4/01/02		4	
Rocco, Patrick L	4/11/00	Cooler Svc Tech II	4	
Gallegos, Paul J	3/24/97		4	
Whillans, David L	8/25/93		0	
Perez, Joseph O	4/20/98	Cooler Svc Tech I	4	
Aranda, Anthony M	6/15/95		4	
Esquibel, Michael	5/21/96		4	
Lucero, Joseph D	1/31/94		4	
Rex, Kevin E	4/27/95		0	
Urrutia, Angel A	5/23/94		4	
Woodhouse, Jamie J	8/15/94		0	
Sertich, Anton J	9/05/89	Bldg Maintenance Worker	0	
Lopez, Morris A	9/23/96		4	
Padilla, Eddie M	6/10/99	Transport Driver	4	7
Prieto, Jesus M	9/05/00	Special Events Driver	4	

Complete name	Hire date	Position title	E ID	Grp
Abeyta, John M	8/03/01	Premix/ Postmix Driver	4	
Torrez, Gene	5/30/00	Parts Expeditor	4	
Castaneda, Monico M	9/05/95	Full Svc Driver-Senior	4	
Munoz, Lorenzo	3/06/95		4	
Castaneda, Pedro	1/18/01		4	
Dumas, Andrew C	4/11/90	Full Svc Delivery Driver	0	
Goss, Herbert M	7/07/92		0	
Vera, Erich S	10/24/94		4	
Aragon, Raul B	8/12/94		4	
De Graaf, Harvey C	4/10/95		0	
Lucero, Ernest J	7/31/95		4	
Covarrubias, Juan M	6/10/96		4	
Berumen, Raul F	4/05/95		4	
Adams, Michael J	5/04/95		4	
Trujillo, Ron J	11/27/00		4	
Chavez, Ronny R	6/26/01		4	
Suazo, Edward G	8/09/78		4	
CDebaca Diego J	3/22/02	Delivery Merch-Relief	4	
Trujillo, Michael F	9/21/99		4	

Complete name	Hire date	Position title	E ID	Grp
Barba, Philip J	5/24/99	Delivery Merch Out Town	4	
Minge, Stan S	3/11/96		0	
Sanchez, Charles A	6/21/94		4	
Barela, Leroy G	7/21/94	Delivery Merch In Town	4	
McLeod, Kelvin L	8/14/98		4	
Castillo, Matthew C	1/17/95		4	
Clark, Daniel E	6/29/00		0	
Donaldson, Scott D	9/25/00		0	
Esquibel, Brian	3/03/98		4	
Gonzales, Alfred M	5/31/96		4	
Sanchez, Ted	11/25/97		4	
Valdez, Ruben E	10/10/95		4	
Vega, Marcos A	3/21/01		4	
Chavez, Dominic L	4/06/01		4	
Hadley, Monte H	5/07/01		0	
Miller, Kenneth W	7/02/01		0	
Suarez, David J	9/23/94	Bulk Merchandiser	4	
Noble, Ian S	11/18/98		0	
Salas, Steven J	10/19/00		4	
Vigil, Daniel J	8/22/00		4	
Trujillo, Christopher J	1/02/01		4	
Anaya, Dennis M	2/12/01		4	
Baca, Leonardo J	2/28/01		4	
Gallegos, Alfonso E	3/26/01		4	
Lucero, David B	3/26/01		4	
Maestas, Eric J	3/30/01		4	

Complete name	Hire date	Position title	E ID	Grp
Apodaca, David D	6/12/01		4	
Sullivan, Gregory E	7/09/01		0	
Villarreal, Luis R	7/23/01		4	
Lafaver, Barry D	9/10/01		0	
Ramirez, Eddie B	10/10/01		4	
Montoya, Jeffrey E	10/30/01		4	
Breitfeld, Wolfram H	12/14/01		0	
Martinez, Vincent P	9/17/01		4	
Apodaca, Phillip F	12/20/01		4	
Brown, Mark E	12/20/01		1	
Avery, Justin P	2/19/02		0	
Talavera, Jose L	4/01/02		4	
Gonzales, Miguel R	4/17/02		4	
Contreras, Raul F	4/19/02		4	
Carrillo, Jaime	4/23/02		4	
Telles, Andre E	4/23/02		4	
Holland, Christopher J	4/23/02		0	
Brey, William J	3/30/00		0	
Gallegos, James D	11/07/01		0	
Montoya, Matthew K	10/30/01		4	
Hernandez, Richard P	3/12/02		4	
Salas, Robert J	6/04/81	Bulk Driver	4	
Esquibel, Phillip E	7/29/87		4	
Montez, Omar I	10/01/91		4	
Sage, Oran K	5/04/93		0	
Isselhardt, Charles M	9/09/94		0	
Chavez, Christopher J	8/13/96		4	

Complete name	Hire date	Position title	E ID	Grp
Rael, James E	9/01/72		4	
Montoya, Tommy R	8/17/98	Warehouse Worker	4	8
Chavez, Ricardo D	10/02/91		4	
Ramos-Cabrera, Joel V	8/16/99		4	
Wills, Carl D	5/06/98		0	
Rael, James E	4/15/98		0	
Ruiz, Florencio C	1/10/92	Loader	4	
Turner, Kimberley R	11/08/94		0	
Haggerty, Wendell L	10/09/97		0	
Ruvalcaba, Jose G	5/14/98		4	
Zuniga, Jenner E	7/24/98		4	
Mendez, Rudy R	5/02/00		4	
Maldonado, Phillip A	6/21/01		4	
Carabajal, John G	7/18/01		4	
Sanchez, Rudy A	7/18/01		4	
Talamante, Patrick L	10/12/01		4	
Espinosa, Matthew	1/11/02		4	
Rivera, Placido D	1/30/02		4	
Martinez, Cruz M	3/22/02		4	
Yoe, Arminda J	4/04/02		4	

EXHIBIT H

EXCERPTS OF DEPOSITION OF SHERRY PEDERSON

[p.29]

A: This particular – actually, none of this [illegible] I go through, this exact program.
Q: Okay. When you're saying this, you're talking about the Management Essentials 1 training?
A: Yes, because I was not a manager or supervisor at the time.
Q: Okay. Since – at any time during your employment with BCI, have you attended any training that discussed a disciplinary interview?
A: I don't recall that specific term, no.
Q: Okay. Have you ever received any training that didn't – that discussed interviews or any kind of information with regards to discipline, even though it wasn't called a disciplinary interview, anything related to a disciplinary interview?
A: I don't recall any formalized program, no.
Q: Okay. Have you ever conducted a disciplinary interview?
A: The disciplines are given by supervisors so in 2000 and 2001 into 2002, I was not a supervisor, so through all that time, no, I did not.
Q: You did not conduct disciplinary interviews?
A: Correct.
Q: In 2001 and 2002?
A: Correct.

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Q: Okay. Now –

A: Well, a portion of 2002.
Q: Okay. For the other portion of 2002 and and 2003, did you ever conduct any disciplinary interviews?
A: Yes, I did.
Q: Okay. Now, what is the purpose of a disciplinary interview?
A: The purpose I would say is to help the employee correct whatever issue they're having, whether it be performance or attendance, whatever the issue is to get them back on track so to speak.
Q: Okay. And you haven't received any – I just want to make sure I understand your testimony. For that portion of 2002 and 2003 that you were conducting disciplinary interview, have you ever received any training on how to conduct disciplinary interview?
A: The training I received is from going back to Pat and through her guidance and, possibly other people in the division office depending on what the issue is.
Q: But no formalized training?
A: I think that could be more valuable than formalized training.

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Q: So that's a no?
A: Being guided for almost every issue, I think that's better.
Q: So that was a no, no formalized training?
A: No formalized training that I recall.
Q: We're almost done, Ms. Pederson. Let me ask you this: Knowing what you know now, what would you have done different with regards to Mr. Peters' termination?

MS. SHEA: I'm going to let her answer the question, but I'm going to object to it as being outside the scope of management training materials.

BY MS. MOLINA:

Q: Well, you, based on your training, you've gone through a lot of training, based on everything you know now, what would you have done differently?

A: I don't think I would have done anything differently to be honest, I really don't.

Q: Okay. Even based on the training that you've received in 2000, 2001, 2002, and 2003?

A: Yes.

Q: Okay. That's a yes, you would not have done anything differently?

A: Correct.

Q: I just want to make sure that I asked you

[p.32]

this. In 2001 you were not conducting exit interviews; is that correct? A: No, that's not correct.

Q: You did – I mean exit interviews for – with individuals who had been fired; is that correct?

A: I do not believe I did conduct any, no.

Q: How about in 2002?

A: No, I don't think so, no.

Q: 2003?

A: We're still talking about discharged people; correct?

Q: Yes, ma'am.

A: Not that I recall, no.

MS. MOLINA: Okay. I have nothing further. Thank you.

(Deposition was concluded at 1:05 p.m.)

* * *

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I believe he was given advice by Pat Edgar.

Q. So it was advice by Ms. Edgar, or was it--
A. He was advised by Pat Edgar.
Q. So what was Mr. Grado's role in this -- he's getting advice or some -- or he's being advised to do something by Ms. Edgar. Is he the person who is simply relaying -- is he the messenger of information from Ms. Edgar?

MR. PRESNELL: Object to the form.

Q. (By Ms. Molina) I'm just trying to figure out, ma'am, what Mr. Grado's role was in relation to the advice from Ms. Edgar.
A. And I'm the one that's saying that she advised him. That was my thoughts on how it happened. You know, you would have to ask Pat whether it was actually advice or whether she actually told him --
Q. Okay. So does that --
A. -- what to do.
Q. So why did you put Cesar Grado here instead of Pat Edgar? Why didn't you put on this form --
A. Because Cesar Grado was the one who actually told him, so that's why I put Cesar's name

[p.75]

on there. Pat did not talk to Stephen Peters.
Q. I understood your earlier testimony that it was Pat's decision, Pat is the one who made the decision with regard to his termination; is that correct?
A. She made the decision to terminate, that's correct.
Q. And I'm going to go back and ask you, what about Mr. Peters conduct -- what was the conduct that was determined to be the insubordination that led to his discharge on October 2nd?

MR. PRESNELL: Object. She's answered that question. Why do we need her to answer it again?

MS. MOLINA: Because I don't recall.

MR. PRESNELL: Let's read the answer back.

MS. MOLINA: Counsel, I would prefer not to do that.

MR. PRESNELL: You prefer to repeat the questions?

MS. MOLINA: I would prefer not to do that because I am limited in time.

MR. PRESNELL: Then we won't count that towards your time.

MS. MOLINA: Okay, then we will go off the

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record.

(Off the record from 11:44 to 11:47.)

(The record was read as requested.)

Q. (By Ms. Molina) Which act that -- you just heard your prior testimony. What specifically of that conversation was the act of insubordination that whole answer that you just heard?

A. To narrow it down even more, it would be after Cesar Grado explained that refusing to work would be considered insubordination and he would be terminated for that. And when -- you know, after that, he still was refusing to work.

Q. So the act of insubordination that caused his -- or that ended up supporting his dismissal, his firing, was that conversation with Mr. Grado, you understand it?

A. Yes.

Q. And that conversation was on Friday, 9/28/01; is that correct?

A: Yes.

Q. Let's go back to Exhibit N. These may have been the -- these documents were provided to the EEOC recently. These are marked BCI00191, 192, 194, 195. Do you see that?

A. Yes.

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Q. And this is all part of Exhibit N. Were you the person who gathered these documents to provide -- or provided the copies of these documents so that BCI could provide them to the EEOC?
A. Probably.
Q. Okay. Would there be anybody else but you who would have done that?
A. Probably not, no.
Q. Okay. Do you know why this -- the DSN on document 191 and 192, the EEOC was provided with a copy of that DSN during the administrative investigation?
A. Um-hum.
Q. This one over here, BCI 194 and 195, the EEOC was not provided a copy of that DSN with regard to Stephen Peters. Do you know why, first of all, there are these two DSNs? One seems to be incomplete and one seems to be more completed, and they're in different handwritings. And DSN, 191 and 192, appears to have more information on the second page. Do you know why there are two sets of the same DSN, at least as to the same event?
A. No. I was not even employed at that time, so I have no idea.
Q. Okay. Let's go back to the DSN for

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Mr. Peters' Exhibit N. Were you present when this DSN was given to Mr. Peters?
A. Yes, I was.
Q. Okay. And that was October 2nd, 2001; is that correct?
A. Correct.
Q. Okay. Who else, besides yourself, was present at the time that Mr. Peters was presented with this DSN?

A. The additional people that signed this, Stephen Peters, Cesar Grado, and Don Bateluna.
Q. Anybody also?
A. No.
Q. Tell me what happened during this meeting, this occasion when he was -- when Mr. Peters was presented with this DSN.
A. What I recall is that Cesar Grado explained -- you know, went through the Disciplinary Status Notice, read that to him, and asked him if he had any questions or comments. And the only thing I remember -- I don't remember any other specific comments, except that I believe he said something to the effect of, you know, we'll hear from his lawyer, or he was going to get a lawyer, or something about a lawyer. And you know, he put, "I do not agree,"

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on the form. And then he walked out.
Q. He, Mr. Peters?
A. Mr. Peters walked out.
Q. And he's the one who put on the form, "I do not agree"?
A. Yes.
Q. During the time that Mr. Peters -- let me go back and ask you some follow-up questions.

Mr. Grado explained the DSN or he read the DSN?
A. He read it.
Q. So when you say, "explained," you mean he read?
A. He read, yes.
Q. Okay. Did you have any questions, comments or any input during this time, this meeting with Mr. Peters?
A. No.
Q. Did anybody, Ms. Edgar or Mr. Bateluna?
A. Pat Edgar was not there.
Q. Oh, I'm sorry. Okay. Did Mr. Bateluna?

A Not that I recall, no.
Q. Okay. What happened after Mr. Peters left, with regard to Mr. Peters and what had just happened?

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A. Could you be more specific? I mean, do you mean when did he come back for his paycheck? I'm not sure what you're asking.
Q. Okay. I will re-ask it or restate it. After Mr. Peters left the meeting, when he was fired, remaining in the room were yourself; is that correct --
A. Um-hum.
Q. -- and Mr. Bateluna and Mr. Grado; is that correct?
A. Correct.
Q. So the three of you remained in the room --
A. Yes.
Q. -- in your office. Do you know how long you stayed in your office?
A. I really don't recall.
Q. Okay.
A. It wasn't long.
Q. Okay. Was there any conversation or discussion or comment made by anyone after Mr. Peters left the office?
A. I don't recall any specific comments.
Q. Okay. You made reference to Mr. Peters indicated on the DSN that he did not agree; is that

[p.81]

correct?
A. (Witness nods head.)
Q. Is that a yes?
A. Yes.

Q. Did anyone follow up with Mr. Peters as to why he indicated on this form that he did not agree?
A. No, because he left -- he got up, he wrote something down. I didn't realize what he wrote until after he walked out, and he left.
Q. Okay. After he left, did anybody make any inquiry concerning his statement that he did not agree?
A. No.
Q. Did you speak to any witness after learning of what was going on with Mr. Peters and Mr. Grado and the work schedule for the weekend, did you speak to anyone other than Mr. Grado and Ms. Edgar? Did you speak to anybody or interview anybody?
A. No.
Q. Okay. Did you speak to Mr. Peters prior to his termination?
A. No.
Q. How many people -- during your time with Coca-Cola, in your approximately four years, how

* * *

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kept?
A. They are not to be kept.
Q. Why is that?
A. Because it's confidential information on an employee, so we would not want to keep something laying around --
Q. So what happens --
A. -- that is not part of their record.
Q. So what happens to those drafts?
A. I would only make an assumption that they are destroyed.

Q. Let me ask you if you recognize the handwriting on this part of the exhibit, and I'm asking you about page 206 of Exhibit E.
A. Yes, that is my handwriting.
Q. Your handwriting, okay. Is it your handwriting -- does your handwriting appear on the entire document, with the exception of the two signatures that are not your signatures at the bottom of the first page?
A. Yes, it is.
Q. Okay. So who dismissed -- who fired Mr. Ulibarri?
A. I made the decision, and Cesar actually carried it out. You know, I have to correct myself

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on that. I believe Pat Edgar may have made the decision, but this is my writing on the form.
Q. So the decisions as to discipline to be imposed on employees is made by somebody in Human Resources; is that correct?
A. Yes.
Q. Okay. And the decision is carried out by the employee's manager; is that correct?
A. That's correct.
Q. Is the employee told who the decision maker was with regard to the discipline imposed?
A. I don't know. I don't know if it was verbalized.
Q. Just generally in this process of HR making the decisions with no recommendations from supervisors on discipline and HR making the decisions that are carried out by the manager, how would an employee know that the manager is simply the messenger, that the decision maker is somebody else?
A. I think many times they are told, but I can't say that in every case that it is verbalized to them.

Q. Why is that information not on the DSNs? The information I'm referring to is, decision to

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terminate was made by, and then provide the person's name, why is that information not on the DSN?
A. I can't answer that. I don't know.
Q. Why is the information on the DSN not -- why does the DSN not show who is imposing discipline, short of termination, for example, probation or suspension, why is that information not on the DSN?
A. I don't know.
Q. As an HR -- Senior HR -- and now you hold even a higher management position; is that correct?
A. Yes.
Q. Would it be -- would you agree that it would be confusing to an employee to look at the DSN and not see who the actual decision maker -- because it's not on there, who the actual decision maker is with regard to a particular disciplinary action taken against that employee?
MR. PRESNELL: Object to the form.
A. The reason why we're making the decisions -- I say, we -- why HR is making the decisions is to be fair and consistent with the employees. I think it would be more confusing if it was down there. They may misinterpret that and think that they report to HR. That is my opinion.

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Q. And in keeping, with your opinion, isn't it -- wouldn't it be fair to tell the employee, that these DSN forms -- that the person who is responsible for discipline is Sherry Pederson, Patricia Edgar, whoever it is from HR? Isn't that fair to the

employee, that the employee know who's the one who is firing me or who is the one who is putting me on probation?
A. I don't have any opinion on that.
Q. Let's go back to Exhibit J. I have it right here. I'll take those exhibits back.

MR. PRESNELL: Did you say Exhibit J?

MS. MOLINA: Oh, H. Thank you, Todd.

Q. (By Ms. Molina) Let's go to the second page of this exhibit. We've already looked at it earlier.
A. Yes.
Q. Other than Group A, Number 5 being titled, "Insubordination," how is an employee -- how does an employee know what kinds of conduct may lead to insubordination by looking at this? If an employee looks at this Group A, how would an employee know what insubordination is?
A. When the supervisor tells them. I mean if there's something that they did and they're told,

* * *

EXHIBIT I

New Mexico Department of
LABOR
P.O. Box 1728
Albuquerque, New Mexico 87103
Fax (505) 841-8636

EMPLOYER'S STATEMENT

This individual has filed a claim for unemployment compensation benefits and named you as the last employer. Please review the reason for separation given. Complete this form and return it to: NM Department of Labor, P.O. Box 1728, Albuquerque, NM 87103. Failure to respond within 10 calendar days from the date of this notice shall be deemed an irrevocable waiver of your rights to be heard before a determination is made and your account may be liable for benefit changes.

IF SEPARATION WAS FOR LACK OF WORK, THIS NOTICE IS OUR DETERMINATION. YOUR ACCOUNT WILL BE CHARGED FOR ANY BENEFITS PAID BASED ON THIS PERIOD OF WORK. THE DETERMINATION WILL BECOME FINAL UNLESS AN APPEAL IS FILED WITHIN 15 DAYS FROM THE DATE OF THIS NOTICE/DETERMINATION WAS MAILED.

Claimant's Name: Stephen Peters
Social Security Number: XXX-XX-XXXX
THE INDIVIDUAL'S FIRST DAY OF WORK WAS: 5/3/95
LAST DAY OF WORD WAS: 10/2/01

WHO WAS THE CLAIMANT'S IMMEDIATE SUPERVISOR? Cesar Grado

REASON FOR SEPARATION: FIRED

GIVE FULL DETAILS FOR SEPARATION: Insubordination – Stephen was given a directive on 9/28 to report to work on Sunday, 9/30. Stephen said he had other plans. Stephen was told by Cesar Grado that if he didn't show up, it would be considered insubordination.

IF FIRED, WHAT WAS THE FINAL INCIDENT THAT CAUSED THE DISCHARGE? Stephen did not show up for work on 9/30.

IF THE CLAIMANT WAS DISCHARGED, WAS HE/SHE WARNED? YES

IF YES, WHEN AND HOW (SUBMIT PROOF OF WARNINGS): 2-day disciplinary suspension on for insubordination on 9/21/99. Refused to word on a weekend.

DOES THIS INDIVIDUAL HAVE A DEFINITE RETURN TO WORK DATE? NO

IF YES, WILL THIS INDIVIDUAL RECEIVE VACATION PAY FOR ALL OR PART OF THIS PERIOD? NO

UPON SEPARATION, THIS INDIVIDUAL WAS OR WILL BE PAID HOLIDAY PAY OR WAGES IN LIEU OF NOTICE: NO

I CERTIFY THE INFORMATION FURNISHED IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT APPLICABLE LAWS PROVIDE PENALTIES FOR FALSE INFORMATION.

/s/_____
Sherry Pedersen - Sr. HR Administrator
Signature & Title

Date 10/10/01

DOCUMENTS ATTACHED: YES

IF YES, LIST DOCUMENTS: Discipline - 9/21/99 & Discharge 10/2/01

NAME OF COMPANY: Coca-Cola Bottling Co. of Albuquerque

ADDRESS: 7901 Los Volcanes, NW, Albuquerque, NM 87121

PHONE: 505-352-3279

EXHIBIT J

Phoenix Coca-Cola Bottling Company

November 15, 2001

Pat Trujillo, Federal Investigator
Equal Employment Opportunity Commission
505 Marquette N.W., Suite 900
Albuquerque, NM 87102

Re: Charge Number 390A20047 Stephen Peters

Federal Investigator Trujillo:

Please find following the response of Coca-Cola, Dr Pepper Bottling Company of Albuquerque, 7901 Los Volcanes Road N.W., Albuquerque, NM 87121 to the Charge of Discrimination filed by Stephen Peters, a former employee of the Company. If you have any questions, please contact me at (480) 345-3192 in our Phoenix Division office.

The Company hired Stephen Peters on May 3, 1995. He was a Merchandiser when his employment was terminated on October 2, 2001 for insubordination.

Merchandiser's fill shelves, coolers, venders' displays with Coca-Cola products; face, rotate, remove out of code products; condense back room and work load (organize and put away); work closely with Account Manager or other team members to ensure that maximum sales are attained; clean (dust) shelves' backroom; build & move displays, etc. They work overtime as required to maintain business demands - this includes an overtime day on a regular scheduled day off. Weekends and holidays are very demanding with customer

service in our industry. This job demand is understood as a requirement of the job.

On a frequent basis trying to schedule Mr. Peters in on a regular scheduled day off was "like pulling teeth" according to his Supervisor, Cesar Grado. Mr. Grado held back from forcing Mr. Peters to work as needed on his scheduled days off as Mr. Peters was in constant pushback from working over a weekend. However, business demands that could not be ignored made it necessary to force Mr. Peters in on the date in question. On September 28, 2001, Mr. Peters was given a direct order to come in to work on Sunday, September 30, 2001 due to business necessity. His District Sales Manager, Cesar Grado, explained to Mr. Peters that this was a direct order and failure to comply would be considered insubordination and would result in his termination. Disciplinary discharge paperwork attached.

Mr. Peters told Mr. Grado on September 28, 2001 that he had plans and to do whatever he had to do. Mr. Peters then called in "sick" on Sunday, September 30, 2001. Mr. Peters told Mr. Grado and the local HR Administrator, Sherry Pedersen, in a meeting that he had a doctor's note, but he did not provide one.

Mr. Peters received a disciplinary suspension in September 1999 for insubordination and given a final warning. At that time, it was made very clear to Mr. Peters that he is required to work overtime as scheduled even on his normally scheduled days off based on business necessity. Our business depends on every day customer demands that include weekends (or normally scheduled days off) and holiday service. 1999 disciplinary paperwork attached.

Race was not a factor in our decision to terminate Mr. Peters.

Sincerely,

/s/_____
Patricia K. Edgar
Employee Relations Manager

EXHIBIT K

EXCERPTS OF DEPOSITION OF PATRICIA K. EDGAR

[p.74]

a final warning?

A. No.
Q. Okay.
A. Not that I recall.
Q. And it goes on further to say, "At that time it was made very clear to Mr. Peters that he is required to work overtime as scheduled even on his normally scheduled days off based on business necessity. Our business depends on everyday customer demands."

So that statement -- you're talking about the 1999 incident in that paragraph?
A. Yes.
Q. Okay. So the same questions: When you say at that time it was made very clear to Mr. Peters, you didn't ask Mr. Peters if it was made very clear to him?
A. No.
Q. And you didn't ask Esquibel, Brawley, Matthews, Donnelly if it was made very clear to him?
A. I may have had a conversation with Irene.
Q. Before you prepared the EEOC response.
A. I don't recall, but she was my director.
Q. So are you saying that there's a possibility you spoke to Irene Brawley in

[p.75]

preparation of the EEOC Position Statement to verify whether this 1999 write-up --
A. Maybe not to verify this, but that -- I think I might have had knowledge that that did occur.
Q. But you're not too sure?
A. To the best of my recollection.
Q. Okay. Okay. The last paragraph, "Race was not a factor in our decision to terminate to Mr. Peters." Who is the "our" in that sentence?
A. Probably the company.
Q. Probably?
A. Well, our decision.
Q. Whose decision?
A. The company.
Q. Who in management?
A. It's a figure of speech.
Q. Okay. Would you look at -- I'm going to take this one. Would you look at this exhibit, please? We're on Exhibit W. So this is a second response that you prepared to Mr. Trujillo of the EEOC--
A. This is the Attendance Policy.
Q. Oh. I'm sorry.
A. That's okay.

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Q. There we go. Exhibit U.
A. Okay. Thank you.
Q. This is a response to a second request for information by Mr. Trujillo; is that correct?
A. Yes.
Q. Would you look specifically to item 11 in your letter?
A. Okay.

Q. "Merchandiser work schedule." You say, "Merchandisers were scheduled to work overtime days on regular scheduled days off in the following manner: 1) by volunteer; 2) by rotation; 3) mandated."
A. Right.
Q. What did you mean by that, volunteer, rotation or mandated?
A. That's what Cesar had told me, that first he asked for volunteers that would want overtime. Sometimes he would rotate to be -- out of a sense of fairness, if there was a lot of overtime, that everybody would take their turn, and that sometimes he told people that they needed to work and they worked.
Q. Okay. So he got to the point where he told people that they needed to work after he had

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asked for volunteers or had gone through a rotation?
MR. PRESNELL: Object to the form.
A. Repeat the question.
Q. (By Ms. Molina) Okay. This whole scheduling of the merchandisers would start by he would first ask for volunteers?
A. That's what he told me, yes.
Q. Okay. And then if there weren't any volunteers, then he would go to a rotation system?
A. That was my understanding, that that was how he took care of his business. First, by volunteers, then by rotation, so that everybody had to do whatever, that somebody wasn't continually being the only one that had to work and then to -- if you have to work, you have to work. There's nobody else.
Q. Okay. So are the people in the rotation, are those volunteers? If he has more people that he needs because many have volunteered, then he goes to a rotation so that it's fair?

A. I think that's how he made his decision to balance out if there were people that necessarily didn't want to volunteer, that he would balance it out by having a rotation system where everybody got some overtime.

* * *

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told you or wherever you tried to find out if Mr. Grado had tried to make arrangement for the schedule on Sunday?
A. Say it one more time.
Q. Yeah, whether Mr. Grado had made any arrangements to cover the schedule on Sunday?
A. I don't have any knowledge about that.
Q. Did you ask Mr. Grado?
A. When?
Q. At any time.
A. I guess I don't understand your question. In regards to what?
Q. To Mr. Peters being terminated from his job.
A. At the time or here or --
Q. Yes.
A. When are you talking?
Q. Okay. Let's get away from this document.
A. Okay.
Q. At the time that it happened, at the time that -- from September 27th, 28th, to October the 2nd, do you know whether Mr. Grado, during that time period, had made any other arrangements to cover the schedule -- to cover the shift that Mr. Peters was to work on that Sunday?

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No' I don't.

Q. Did you ask him if he had made arrangements?
A. They probably would -- our business is very reactionary to customer demand and everything else. It probably would depend on who was there, who wasn't there. And Mr. Grado, himself, probably even thought that there might be a chance he would have to work. So I -- but I don't remember specifically asking him, no. But that's the nature of our business. It changes all the time.
Q. So the business necessity that existed on Friday may not have been existing on that Sunday is what you're saying?
MR. PRESNELL: Object to the form.
Q. (By Ms. Molina) Okay. When on that Monday, there was that conversation about whether Mr. Peters -- whether Mr. Grado had heard from Peters, do you recall that?
A. Yes.
Q. Okay. That's when you asked him if he had heard from Mr. Peters?
A. Right.
Q. Okay. He asks if he had heard from Stephen Peters on Friday, I believe was the

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testimony.
A. Right.
Q. And he hadn't heard from him; is that right?
A. That's my recollection, yes.
Q. Why would Grado be expecting to hear from Peters if Peters had made it clear on Friday that he wasn't going to work on Sunday?
A. I felt that it was an ongoing reflection of insubordination from what happened on Friday for Mr. Peters not to contact Mr. Grado regarding what happened on Friday.
Q. Okay. So Mr. Peters was -- okay.
MR. PRESNELL: Wait, wait.

Q. (By Ms. Molina) Go ahead.
A. He was insubordinate on Friday. The action was carried out -- or part two was he didn't show up, and part three of it is that he didn't bother to call. He continued that.
Q. So three parts -- three different incidents?
A. Well, to explain it to you now.
Q. Okay.
A. Yeah.
Q. Okay. So in looking back, he could have

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been written up three times for insubordination?
A. No, I'm not saying that.
Q. So there were three parts to his one incident of insubordination?

MR. PRESNELL: Object to the form.

A. I'm saying there were considerations in my mind that added to this, to him not calling.
Q. (By Ms. Molina) Okay. That's fine. The third paragraph on the second page of Exhibit V, your PDI response letter, second page, third paragraph.
A. Okay.

MR. PRESNELL: Her what letter?

MS. MOLINA: PDI, predetermination interview and letter.

Q. (By Ms. Molina) "Mr. Peters had been specifically instructed to contact Mr. Grado at least a half hour prior to the start of a scheduled shift if he was unable to report to work." Do you see that?
A. Yes, I do.
Q. Okay. How do you know that Mr. Peters had been specifically instructed by Grado to contact him?
A. Because that's what Mr. Grado instructs

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off to the supervisor, but Ralph said pretty much the same thing and only got suspended for five days. Why? Do you see that?
A: Yes.
Q: So that is an example of what you consider to be discrimination; is that correct?
A: It could be, yes.
Q: Okay. And why is that? Why did you include that as something that could be discrimination?
A: Because you want to -- you don't want unexplained inconsistencies, but every situation has its own merits, so it would be a discussion with the supervisors on letting them see that it's important to be consistent.
Q: And you don't want unexplained inconsistencies because that's discrimination; is that correct?
A: It could be.
Q: Would you turn to page 277. Was this another slide that you presented to the managers and supervisors in attendance?
A: Yes.
Q: And this one, the slide reads "Reviewing the Supervisors Role"; is that correct?

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A: That is correct.
Q: Okay. Now, what is this? What was your purpose in providing this information to the attendees?
A: What was the purpose?
Q: Yes, ma'am.
A: To discuss with them from a training aspect what their role is with regards to employees.

Q: Their role being the manager's role with regard to employees; is that right?
A: Any supervisor's role.
Q: Including Cesar Grado's role?
A: Yes, he was a supervisor.
Q: Now, would you look at the section -- or at the second point in your slide reads, "applying work rules consistently", do you see that?
A: Yes.
Q: What were you referring to with regards to that topic?
A: Being consistent.
Q: In what?
A: In applying work rules.
Q: What work rules?
A: Employee rules and regulations.
Q: Such as?

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A: Well, our employee rules and regulations say that every matter the company reserves the right to consider individual circumstances based on their own merit, go with rules and regs. And there are group A, group B, group C rules. Some of them are progressive in nature, some of them aren't. Some of them would be -- could be immediate dismissal. So it's important to know what the policies, procedures, work rules are, and to look at applying them consistently.
Q: What do you mean by applying them?
A: Decisions that are made, accountabilities.
Q: What do you mean decisions that are made?
A: I don't understand your question, what do you mean? I'm not sure I know what you want. Decisions that are made that have to do with being at work.
Q: You mentioned discipline in three groups A, B, and C; is that right?

A: Yeah, work rules.
Q: Work rules. And those work rules have to do with discipline; isn't that right?
A: They have to do with -- they would have to do with discipline if someone were out of the guidelines and discipline were applied.
Q: And in providing this training to

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supervisors including Cesar Grado, he refused training on how to apply work rules consistently; is that correct?
A: Well, on this slide as a training guide, it was part of saying to them, to all supervisors and managers that it would -- it would be their role to apply workplace rules consistently.
Q: And workplace rules include rules having to do with discipline; isn't that right?
A: Well, like I -- yes, the rules and regs say they don't cover every conceivable situation and that's why it's deemed -- that's why you have to look at everything based on its own merits.
Q: So what is the -- what was the purpose of providing supervisors and managers, including Cesar Grado, training on how to apply work rules consistently?
A: What was the purpose?
Q: What was the purpose?
A: To help them grow in their roles. That's what training is about, is helping develop people and opening up discussion.
Q: Because that's part of their responsibility; isn't that right?
A: It's part of their responsibility to -- they

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A: Yes.
Q: Okay. What did you do to investigate?
A: Pulled the personnel file.
Q: What else did you do to investigate?
A: I had firsthand observation or information from the supervisor.
Q: When you say you pulled the personnel file, you were in Phoenix; is that correct? Weren't you in Phoenix?
A: Yes.
Q: So did you have Mr. Peters' file here in Phoenix?
A: No. I had -- I asked Sherry Pederson to pull the file.
Q: So you did not pull the personnel file?
A: No, I meant asked to have the personnel file to see what was in it. That's what I meant.
Q: What else did you do?
A: Other than talking to Cesar and Sherry and looking at the -- and having her tell me what was in the personnel file, that's it.
Q: Is that something you would tell participants in your training sessions, would that be an example of a careful, thorough, objective investigation?

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A: Yes, if you had firsthand observation from the supervisor just like this says.
Q: And you were satisfied with what you had?
A: We rely on our supervisors to uphold the rules and regs and so forth, and yes, we had firsthand information from the supervisor that said this is -- and very compelling to me.
Q: Turn to page 281. What is this, "Supervisor's EEO Checklist"?

A: I think it's training materials to open supervisors' eyes as far as, again, getting all the facts and so forth.
Q: Does this include a check -- is this a checklist for managers or supervisors who are going to take any action with regards to an employee's employment?
A: I think it's a guideline that supervisors can use in getting information prior to contacting HR. It makes our job a lot easier if they know what's going to be required.
Q: Okay. Look at number one.
A: Okay.
Q: This checklist for supervisors says, "Do I have all the facts from all sides before acting?" Do you see that?

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A: Yes, I see that.
Q: Did you do anything to find out from Mr. Grado if he had all the facts from all sides before acting, meaning calling you?
A: Did I ask Mr. Grado that?
Q: Yes.
A: I remember questioning him. I don't know if I specifically quoted this line, but we certainly had a discussion about the facts of the case, yes.
Q: Did you have the facts from all sides before making a decision with regards to Mr. Peters?
A: I felt I had sufficient facts to make a decision.
Q: Did you have the facts from all sides before you made a decision with regards to Mr. Peters?

MS. SHEA: Objection, asked and answered.

THE WITNESS: I'm not sure what --

BY MS. MOLINA:

Q: You had information from one side, Cesar Grado; isn't that correct?

MS. SHEA: Objection to the form of the question.

THE WITNESS: That's not correct.

BY MS. MOLINA:

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Q: Oh, then what other side did you have?
A: I had past history from the personnel file of a very similar incident with a different DSM that added to Cesar Grado's firsthand observation or interaction with Mr. Peters. It confirmed it.
Q: And this is the incident -- well, what did you know about this previous incident?
A: The personnel file said that he was -- I believe it was a disciplinary suspension, or a final warning that any other behavior such as that would result in his termination.
Q: Did you confirm that Mr. Peters had been made aware of that warning?
A: I'm not sure I know what you mean by that. It was documentation in the file.
Q: Did you confirm whether Mr. Peters had been -- was aware of that final warning?
A: Confirm with who?
Q: With Ms. Pederson, the person that is giving you the information?
A: Did I confirm with her?
Q: Yes, ma'am.
A: I trusted the information.
Q: So that's a no?
A: I'm not sure I understand your question. I

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asked her to pull the file and share with me what was in the file. She did. I don't remember if I specifically asked her if I could trust the information.

Q: Did you specifically ask her whether there was any indication on the document that Mr. Peters had received the final warning?
A: I don't even know if I asked her that specifically. It was an -- it was my understanding that he had been given the warning.

MS. SHEA: Objection. Ms. Molina, could you explain what this has to do with the training materials? We're going back into the same subject matter that's been explored in depth in the prior deposition.

MS. MOLINA: This is - I'm going off the supervisor's EEO Checklist that was provided, again, two days before the discovery deadline. And according to this checklist, Ms. Edgar provides this training to supervisors, and the checklist says that she - there are certain things that are expected of supervisors with regards to employees.

THE WITNESS: It's guidelines, yes, training guidelines.

BY MS. MOLINA:

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Q: All right. Training guidelines?
A: That's what it is.

MS. MOLINA: Okay. So it is absolutely permissible for me to ask this witness about her role and these training materials and Mr. Peters' claim. I don't see how I cannot ask her about this, her role again and the training materials as it pertains to Mr. Peters.

MS. SHEA: I agree but I think some of the questions are getting -- there is a disconnect between the training materials and what you're asking, if you're going back and asking what she said to different people at different times

during that time period. These questions have already been asked and I don't see how the answers -- the question/answer is effected by the training materials.

MS. MOLINA: They are proper follow up, Ms. Shea. And to the extent I can, I'm trying to stay as close as I can to these materials.

MS. SHEA: I'm not saying you can't do that. And I don't want to, you know, cause an unnecessary delay or problem here.

MOLINA: Okay.

BY MS. MOLINA:

Q: Now, back to number one, reads, "Do I have

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all the facts from all sides before acting." So with regards to Mr. Peters' claim, you had -- you had talked to Cesar Grado on the phone; is that correct?

A: Yes.

Q: And then you asked Ms. Pederson to pull Mr. Peters personnel file; is that correct?

A: Yes.

Q: Anything else with regards to obtaining facts from all sides before acting with regards to this number one in this checklist, anything else that you did?

A: There are no other individuals that I talked to.

Q: And you didn't talk to Mr. Peters?

A: No.

Q: Number two reads, "Have I reviewed applicable company policies and practices?" Do you see that?

A: Yes.

Q: Did you do that?

A: Did I do that?

Q: Yes, ma'am.

A: Yes.

Q: With regards to Mr. Peters, termination?
A: Yes.

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Q: Okay. Which company policies and practices did you review?
A: The rules and regs.
Q: Which ones?
A: There's only one set.
Q: Which ones are those?
A: The employee rules and regs. You mean which violation?
Q: Which particular rule and reg did you look at?
A: Insubordination.
Q: And when you say insubordination, you're talking about the list of group A violation -- group A violation that lists insubordination as a violation; is that correct?
A: I think it's A(1), yes.
Q: Okay. There's nothing else other than that, those materials that discuss insubordination, is that correct, as far as the rules and regulations?
A: I'm sorry. You'll have to ask me again.
Q: Yeah, that's not -- I'll rephrase. Other than looking at the rules and regulations that talk about insubordination, did you look at anything else?
A: I looked at the rules and regs as a whole. When somebody is telling me a situation, I listen to

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materials?
A: There were materials and when I was -- when information was requested, I provided what I had in my system still, in my computer.

Q: Where are the additional materials at?
A: They weren't in my system.
Q: Where are they at?
A: I don't know. I'd have to look.
Q: So there are?
A: There could be, yes, there could be training materials.
Q: For 2001?
A: Yes.
Q: Okay. But you don't know where those are at?
A: Not off the top of my head right now.
Q: And I'm not asking you to tell me what you discussed with counsel, and I'm asking -- I'm not asking her to waive any confidentiality or privilege or anything, but when you were asked to provide the materials, what were you asked to provide?
A: Any training materials that I had.
Q: And you knew that those training materials existed in -- at least for this 2001 training session and you didn't provide those to counsel; is that

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right?
A: I provided what I had.
Q: Off of your computer?
A: Right.
Q: So --
A: In looking for what I had, I provided everything that I had.
Q: Off of your computer or that you had in your computer?
A: Well, everywhere, but the computer is where this stuff was, was in my computer.
Q: Okay. So do you have -- do you have 2001 materials that you used to put this presentation on employee administration?
A: I don't.

Q: Who does?

A: I'd have to -- I don't know. I'd have to look. I'd have to see if I could locate it. I looked for everything that I could find and I sent it. It did exist.

MS. SHEA: Do you know for a fact that it still exists now?

THE WITNESS: I don't know for a fact if it still exists now.

BY MS. MOLINA:

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Q: And you can't tell me who attended this particular training?
A: Yes, it was all the HR admins from like Gallup, Albuquerque. Albuquerque we had the office manager attend; Roswell, Alamogordo, Hobbs, Clovis, Tucson, Cochise, Yuma, Prescott. We had all the 171 admins come in.
Q: Does that include -- would that have included Sherry Pederson?
A: It would have but I don't think she attended this.
Q: Why do you not think she attended this?
A: I think she was gone. That's why Eva attended, Eva Schuler.
Q: Gone where?
A: I think she was on vacation or something.
Q: She wasn't available to attend the meeting pal is what you're saying?
A: Yeah' that's my recollection.
Q: And you don't have a sign-in sheet as to who attended?
A: No. I provided what I had.
Q: Do you know whether Don Bateluna attended the training?
A: No' just admins.

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Q: Just admins?
A: Clerks.
Q: What do you mean clerks?
A: Senior clerks, some of them are called lead clerks some of them might be at an office manager level. Office manager meaning manages the office, but they are support people.
Q: Support staff?
A: Yes, ma'am.
Q: Okay. Why would Sherry Pederson be attending this meeting for support staff personnel?
A: Because at the time she was an administrator, an admin person.
Q: So at the time she was not a supervisor?
A: No.
Q: This is 2001?
A: Right.
Q: Was she a manager in 2001?
A: No.
Q: So she was support staff?
A: She was an admin, yeah, admin.
Q: Then in 2001 did support staff have authority to fire employees?
A: As a senior HR, no, she wouldn't fire people.

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Q: Did she have -- as a support staff admin person 2001, did Sherry Pederson have the authority to impose discipline on employees in Albuquerque?
A: Yes, as a senior HR administrator.

MS. SHEA: You can finish your answer.

THE WITNESS: She would overlook the consistency of something and call me whenever she had any questions.

MS. SHEA: And I believe we're clearly going beyond the scope of the training materials and asking about people's job responsibilities and duties in 2001. So I'll object on that basis to further questioning along those lines.

MS. MOLINA: If I had the materials it would have made it -- these materials are incomplete so I'm just trying to figure out who --

THE WITNESS: Long time.

MS. MOLINA: -- yes, who attended the training. You don't have a sign-in sheet and I certainly don't have the actual materials that were presented, so. . .

BY MS. MOLINA:

Q: Okay. So the employee, the admin clerks type support staff, people attended?

A: Some branches are bigger than others, and so

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some of their responsibilities differ a little bit in each branch because some may only have 13 employees there and they do admin responsibilities, but we wanted to bring them in and give them education so...

Q: And I'm just going to ask you some more about this employee administration training since you presented the training. What was the training with regards to confidentiality about? What did you present?

A: It had to do with if they are forwarding like ESNs or new hire packets that they keep that information confidential.

Q: They, being whom?

A: The admins, that they don't, you know, that those kinds of documents are confidential, people's rates of pay and Social Security numbers that get written on things.

Q: Anything else?

A: It might have had to do with sometimes they would get calls from spouses or people looking for an employee and not

to give -- not to give out information but to be confidential.
Q: How about with regards to exit interviews, what training did you provide on that topic in 2001?
A: Probably to make sure that they encourage

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the individual to contact whoever the local HR was whether it be Albuquerque or Phoenix, depending on what branch they were in so that an exit -- to schedule an exit interview or whatever.
Q: Who was to make sure that -- I'm sorry.
Strike that.

When you say make sure they encourage the individual, who do you mean by they? Who do you refer to?
A: Well the admin, the support people that, you know, if they are doing, getting ready to package paperwork and send it to us, they also know that we want to set up something.
Q: Okay. And how are admin people in 2001, according to your training, how were they to encourage, using your word, that the individual contact local HR with regards to exit interviews?
A: Give them our phone number, give us a call and say I'd like to schedule Joe, you know, can you schedule Joe for an exit interview.
Q: And what is the purpose of an exit interview? And we're talking about 2001 .What was the purpose in 2001 of having employees go through exit interviews?
A: You know, to obtain information on do they

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feel they had proper training, did they feel that they, you know, that -- if they had any complaints if they were handled timely, you know, how were they treated, what were the

work conditions like, did they have the equipment they needed, stuff like that. Q: And these exit interviews are for employees who are either leaving voluntarily or involuntarily; is that correct?
A: Yeah, it could be either.
Q: And who is supposed to -- in 2001 who was supposed to conduct the exit interview?
A: It could be Sherry Pederson, it could be myself, it could be Barbara Brackett in Phoenix.
Q: Do you know whether an exit interview was conducted with regards to -- if Mr. Peters went through an exit interview?
A: No, I don't.
Q: If I tell you that he did not, would you be able to tell me why he did not have an exit interview?
A: No.
Q: Should he have had an exit interview?
A: Yeah.
Q: Did you do anything to encourage Mr. Peters to contact HR for an exit interview?
A: No.

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Is that what you said?
Q: Yes, ma'am.
A: 303 to 313?
Q: Yes.
A: Yeah, that was my presentation.
MS. SHEA: How long have we been going?
THE REPORTER: Almost two hours.
MS. SHEA: For your purposes, don't we need sort of an exact so you know how much time you have?

MS. MOLINA: Not for my purposes. I think more for yours how many minutes.

MS. SHEA: Well, yeah, this is a two-hour deposition so I'd like to know how many minutes we have left of it.

THE REPORTER: It's been 108 minutes so that's --

MS. MOLINA: 12 minutes left.

MS. SHEA: I'm not going to cut you off in the middle of a question or anything, but I want to I stick to the two-hour limit as much as we reasonably can without cutting you off in the middle of something.

BY MS. MOLINA:

Q: With regards to the materials identified as

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Exhibit EE, the 2002 training materials, do they appear to be accurate and complete?

A: Yes.

Q: Do you agree with these, with the contents of training materials?

A: Yes.

Q: Would you turn to page 312, please. The slide reads or the page and copy of your slide reads, "Your Role in Discipline". Whose role in discipline was this intended for?

A: Supervisors and managers.

Q: DSMs included?

A: Yes.

Q: Why are DSMs getting the extent of training key are getting according to these documents with regards to discipline?

A: Why are they getting them?

Q: Yes, ma'am.

A: So they understand the process.

Q: For what purpose?

A: To be able to gather information, know what's going to be important, what they are going to do once they call HR.
Q: In 2002, did the role of DSMs in discipline, did their role include recommending discipline?

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A: I suppose -- I guess it depends on the individual. There's some people that recommend, sure.
Q: Okay. In 2001 did the role of the DSM include recommending discipline?
A: I'd say it would be the same.
Q: And the same for 2000?
A: Pretty much.
Q: So this training, the training provided to DSMs with regards to discipline was important because DSMs have some discretion with regards to discipline; is that correct?

MS. SHEA: Object to the form of the question.

THE WITNESS: They have -- yeah, we rely on their discretion.

BY MS. MOLINA:
Q: And that was the same for 2001; is that correct?
A: I believe so, yes.
Q: Why is it important? And I'm looking at page 324, the 2002 training materials.
A: 324?
Q: Yes, ma'am, 324. Oh, this is -- I'm sorry. This has been marked as a different exhibit. This is FF, page 324. This is called Basic Checklist for

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Employee Happiness. Is that the EE?
A: Yes.

Q: Why is it important that -- we talked about managers and supervisors being fair, firm and fair in discipline. Why is that important?

A: For consistency and because it's -- as a training guide it's the right thing to do, be fair.

Q: Ms. Edgar, knowing what you know now, what would you have done different with regards to Mr. Peters?

MS. SHEA: Object to the form of the question.

THE WITNESS: Nothing.

BY MS. MOLINA:

Q: Would you look at Exhibit HH. Would you look at all the pages in that exhibit and tell me if that looks complete and accurate to you?

A: Did you say until the blue page here?

Q: Yes, ma'am.

A: Okay. It looks accurate.

Q: Did you prepare the documents in that exhibit? There's some examples in some of these pages and I was wondering if you were the person who --

A: Yes, I --

Q: You're the one who wrote --

EXHIBIT N
EXCERPTS OF DEPOSITION OF
DONALD R. BATELUNA

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been in a management position --
A: Okay.
Q: -- did you ever have a situation where you did not follow the general process of -- with regards to these DSNs and how they come about?
A: Not that I recall, no
Q: Okay. So do you have a sense of what kinds -- what situation would cause you to divert from the general process?
MR. PRESNELL: Object to form.
THE WITNESS: No. Every -- as a manager, everything goes to HR.
Q: BY MS. MOLINA: Now, when you say everything -- okay. Let me go back. Okay. So identified the problem, the alleged problem, okay -- do you agree with that?
A: Okay.
Q: That it's alleged; is that correct?
A: Yes.
Q: And you discuss with the employee. For what purpose do you hold a discussion with the employee?
A: You know -- see, it would depend on what the circumstances are. Say someone's late and they've been late, you know, a few times. Then, you know, maybe he had a flat tire, you know. I mean -- you know, why were you late; finding those things out, you know.

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Q: All right. And then once you find those things out, then you go to HR on every circumstance?

A: Yes. Not on every circumstance. I mean if it's --
Q: Okay.
A: -- you know, you have to use some common sense as well.
Q: Okay. So -- so you did have some discretion as to what to present to HR, in other words?
A: Yes, I would say.
Q: Do DSMs also have that discretion as to what to present to HR?
A: "Yes' I'd say.
Q: Okay. Do DSMs -- and, again, I'm talking about 2001. Did DSMs have -- have any set guidelines as to their discretion with regards to what to present to HR?
A: No.
Q: No guidelines?
A: No. They need to go by policies and procedures.
Q: Okay. But wouldn't you agree with this: That before they get to policies and procedures, the DSM has the discretion whether to even turn into the policy book the section of policies and procedures, right?

MR. PRESNELL: Object to form.

THE WITNESS: Okay.

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Q: BY MS. MOLINA: Is that true?
A: Yes.
Q: So the DSM has the discretion of deciding what to present, first of all, to HR; is that correct?
A: Yes.
Q: And the DSM also had the discretion -- I'm talking about 2001 -- had the discretion to decide whether even to look in the policy manual to see if there's anything, any violation that was committed?
A: Yes.

Q: Is there any -- in 2001, was there any process for -- any process in place that would allow -- that would give HR a sense of what was actually going on in the field with employees and DSMs, other than the DSM coming to the HR person and reporting that?
A: I don't know. I mean, other than the employees.
Q: Just the employees?
A: Uh-huh.
Q: Okay. So if a DSM saw, say, a merchandiser doing something against company policy --
A: Yes.
Q: -- and the DSM did not want to report this employee to HR, HR would never find out; is that right?
MR. PRESNELL: Object to form.
THE WITNESS: I don't know if that's -- I

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don't really know. I guess if -- if -- I mean, it depends on what it is. When you're speaking the hypothetical, I mean --
Q: BY MS. MOLINA: All right. Then what if the DSM is aware of a merchandiser refusing to carry out an order --
A: Okay.
Q: -- and the DSM does not report that conduct to HR, and the merchandiser is not going to report that conduct --
A: Right.
Q: -- because that was against his or her own interest, so how would HR find out about that?
MR. PRESNELL: Object to form.
THE WITNESS: I don't know.
Q: BY MS. MOLINA: Okay. In 2001, was there a process where every -- every alleged problem that a DSM encountered with an employee under his management that would require the DSM to record or document problems?
A: Yes.

Q: But, again, that was within -- that was in the DSM's discretion as to what to document or what not to document; is that correct?
A: You should be documenting, you know, pretty much anything that you do with the employee, you know.

* * *

[p.45]

A: No.
Q: What is a direct order?
A: An instruction to do something, follow through something. Q: Anything else?
A: No.
Q: And what do you mean by knowing the circumstances of not following that order?
A: Well you can ask someone to do something and, you know, say for some reason they don't get it done. Well that's not insubordination, you know. They didn't know what the circumstances were. But if you ask someone, I need you to do this specifically and, you know, if you do not follow through with this, here will be the results of your action not to follow a command.
Q: Okay. Anything else?
A: No.
Q: Okay. Let's see. So if a manager tells -- if a manager gives an instruction to, say, a merchandiser to do something --
A: Uh-huh.
Q: -- and the merchandiser does not do it --
A: Okay.
Q: -- it's not insubordination?
A: No.

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Q: If the manager gives an instruction to the merchandiser to do something and then adds the magical words of what knowing the circumstances of not following with that order or something to that effect, then it becomes insubordination?

A: Yes.

MR. PRESNELL: Object to form.

Q: BY MS. MOLINA: So what are the magical words? I understand those are my terms. What are the magical words that would get an employee from simply not doing his job to getting fired or being insubordinate?

A: Once again, that's already been answered. What's the circumstances?

Q: Any circumstance. A circumstance where an employee is given an instruction to do something and follow through on something and that direct order --

A: Is the employee saying he's not going to follow through? Usually you give an instruction and the employee follows through on it.

Q: Okay. And how would an employee -- how would an employee be -- be told of this -- strike that. Are there -- what are employees supposed to be told to turn a direct order into an act of insubordination?

A: The only time that would happen is if an

[p.47]

employee says, no, I'm not going to do that or refuses to do it.

Q: Or refuses to do it. Okay. So let's take the first part of your last answer. So if an employee says, I'm not going to do it --

A: Okay.

Q: -- okay -- at that moment, I get -- you give me an

instruction, you're going to do X, and I respond to you and I say I'm not going to do that, have I committed insubordination?
A: At that point in time, no.
Q: Okay. At what point in time will I commit insubordination?
A: At that point I would explain to you, real simple, I've given you a direct order. Okay? If it is not followed, it can be considered insubordination.
Q: And then?
A: That would be it.
Q: So once the manager tells the employee I've given you a direct order and not following it can be considered insubordination, then I'm insubordinate, once you tell me those words?
A: Well, basically what I would simply say, you're asking me this, right? You know, I've given you a direct

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order; if you fail to follow this order, he's neglecting to do it, it can be considered insubordination, grounds for termination, then it's the employee's choice.
Q: Okay. So say that the employee --
A: And the employee follows up and does it, then there's no problem.
Q: Even after the employee is told, I am giving you a direct order, if you fail to do this or carry through with this direct order, it can be considered insubordination and could be or would be grounds?
A: Could be.
Q: Could be. So there's some discretion there?
A: Well, you can't fire anybody. HR has that, you know, so --
Q: Okay. So it could be grounds for termination?

A: Right.
Q: And then at what point would -- after receiving -- after receiving that information from a manager would the employee commit insubordination?
A: Whether they did the assigned request or not.
Q: I'm sorry?
A: At the point when they did the request, you know. If they didn't do it, then you could consider it insubordination.
Q: Okay. So there would not be insubordination

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until --
A: Until they failed to follow the directive.
Q: Until the act is not done?
A: Right.
Q: Okay.
A: Or failed to follow the directive.
Q: And that means completing the act that you were requested to do?
A: Right.
Q: Okay. Now, when -- okay. Strike that. Okay. I just want to make sure I got -- I'm finished; that I allowed you to answer a complete question on what you did to prepare for the deposition. You reviewed disciplinary status notices that you had signed; is that correct?
A: Uh-huh.
Q: Anything else, other than reviewing DSNs that had signed?
A: That was it.
Q: Any statements?
A: No.
Q: Have you ever provided a statement to counsel --
A: No.

Q: -- in this case? Did you discuss your testimony with anyone,

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other than counsel, anybody?
A: No.
Q: Okay. Let's go back to the DSNs. I was asking you about -- we were on Exhibit N, just for purposes of using the DSN form, just so I understand the process.

Okay. Looking at this DSN, and this is Stephen Peters' DSN. Okay?
A: Okay.
Q: The claimant in this case. How -- just by looking at this form, who's the one that made the decision to terminate Mr. Peters' employment?

MR. PRESNELL: Object to form.

Q: BY MS. MOLINA: Just by the information that's contained in this document.

MR. PRESNELL: Same objection.

THE WITNESS: Do you mind if I read it?

MS. MOLINA: Absolutely. Take time to read it.

THE WITNESS: Okay. What was the question?

Q: BY MS. MOLINA: Just by looking at this form, can you tell me who the person was that made the decision to terminate Mr. Peters' employment?
A: Sherry Pedersen.
Q: Why do you say that?

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A: She signed and she would have to.
Q: Why is that?
A: Because HR is the only one who can make a decision to terminate.

Q: Okay. And I notice here that you signed as a witness; that's you, right, Mr. Bateluna?
A: Yes.
Q: Right above Ms. Pedersen's signature?
A: Yes.
Q: So you were present at the presentation of this DSN to Mr. Peters?
A: Yes.
Q: So what was the purpose of you being there? I know you signed at the line as witness signature. What was your purpose?
A: As a witness.
Q: as a witness to what?
A: The termination.
Q: Tell me about the termination. What did you witness?
A: I don't really recall a whole bunch about it. What exactly do you want to know about it?
Q: Okay. Who was there?
A: Sherry Pedersen, Cesar Grado, Stephen Peters, and myself.

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Q: And who was the person who actually presented the DSN to Mr. Peters?
A: Honestly, I don't remember.
Q: Okay. Do you know -- were you there from the moment that -- well, let me ask you this: Were you there before Mr. Peters arrived at this meeting?
A: I don't remember or not.
Q: Do you remember what Mr. Peters said, if anything, during this meeting?
A: No.
Q: Did he say anything?
A: Not that I recall.

Q: Did Sherry Pedersen say anything?
A: I'm sure she did, but I don't remember what it was.
Q: Okay. Did Cesar Grado say anything?
A: Not that I can recall. I'm sure he said something. I don't know what he said.
Q: Okay. So from what you see on this form, Ms. Pedersen was the person who made the decision; is that right?
A: Well, HR made the decision.
Q: Well --
A: It's common knowledge, Cesar Grado could not do this.

* * *

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documented and -- you know.
Q: BY MS. MOLINA: Is the -- if an employee doesn't show up for work, say, three days in a row --
A: Okay.
Q: -- what should happen to that employee? Say an employee doesn't show up to work for three days in a row without notifying anybody --
A: Without calling in?
Q: Yes.
A: It's job abandonment, I believe; no call no show.
Q: Okay. And going back to the violations, Exhibit H, that would be a group C violation?

I'm sorry. That would be a group A violation; is that right? It's in number 10.
A: Yes.
Q: Okay. So if an employee is absent from work for three consecutive work days without notifying the company, according to this policy the employee on the first offense is to be discharged; is that correct?
A: You know, I don't know.
Q: Well, sir' there's a D -- do you see that?

A: Oh, yes.
Q: And then if you'll turn to the first page --
A: Discharge, yes.

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Okay. So if an employee commits number 10, that employee should be discharged; is that correct?
A: Yes.
Q: Okay. You know who Arturo Lopez is; is that right?
A: I've heard the name.
Q: You were his immediate supervisor, isn't that correct?
A: No, I was not.
Q: Oh. You were his second level. I'm sorry. You were his second level supervisor?
A: Yes.
Q: So he worked -- he was a merchandiser in Albuquerque when you were a sales manager and he worked under Cesar Grado's management as a DSM; is that correct?
A: Okay.
Q: I mean, I don't want to test your memory to that extent. This is the document that I'm looking at.
A: Okay.
Q: I'm looking at EEOC1-BCI-0063, and we'll mark -- in fact, I will go ahead and mark all of these documents as an exhibit. Well, actually, it's already been marked as an exhibit. Would you turn to Exhibit G.
Okay.
Okay. So this is an employee termination notice

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for Arturo Lopez, is that right?
A: Yes.
Q: And it shows here on the -- let me direct your attention to

this part of the document where the signature lines are. It reads: I state that I possess no property belonging to the company nor any outstanding monies owed to the company, and then, there are several signatures; is that correct?
A: Yes.
Q: And then it looks like an employee signature and there's a signature that purports to be that of Arturo Lopez; is that right?
A: First line, yes.
Q: And then Cesar Grado as immediate supervisor?
A: Yes.
Q: And then, second level signature, Don Bateluna?
A: Yes.
Q: And then human resources signature, Sherry Pedersen?
A: Yes.
Q: Or S. Pedersen?
A: Yes.
Q: Now, turn the page of that same exhibit. According -- this is a document that reads -- that's titled Resignation Statement dated November 28, 2001, for

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Arturo Lopez. And the supervisor's comments are: Arturo has not returned to work or called anyone for over a week. He has accepted employment with Smith's. Do you see that?
A: Yes.
Q: Now, why would that not be -- why would that show up on the employee termination notice as a voluntary termination, where according to the policy he -- he should have been discharged for being absent from work--

MR. PRESNELL: Object to form; calls for speculation.

Q: -- in this one, for over a week?
A: I don't know.

Q: You signed off, sir, on this --
A: Yes.
Q: -- employee termination notice. So do you have any explanation why Mr. Lopez's not showing up for work for over a week, November -- for over a week, actually, is showing up as a voluntary termination instead of a discharge under group A violation?

MR. PRESNELL: Object to form.

THE WITNESS: I don't know, to be honest with you.
Q: BY MS. MOLINA: Okay. And then would you turn

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the page. Then there's a second resignation statement for Arturo Lopez, and this one's dated December 27, 2001, approximately a month after the resignation statement on page 166. And according to this document that was signed by Mr. Grado, Mr. Lopez missed three day consecutively without notifying the company. Do you see that?
A: Yes.
Q: Now, why -- why is that -- was that sufficient, according to the policy, for Mr. Lopez to have been terminated or discharged from his employment --

MR. PRESNELL: Object to form.
Q: -- according to the company's policy?
A: Was what sufficient? This three days?
Q: The three days consecutively without notifying the company.
A: Yes.
Q: Okay. -- Now -- so why -- why is that not shown on this employee termination notice on page 163; that he in fact committed a group A violation for which he was fired?
A: It does.
Q: Okay. Where does it show that?

A: Rehire consideration: No notice, no call no show three days.

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Q: Okay. Where does it show that he was fired?
A: I don't see a spot where it says he's fired, but it's a termination notice and it says: Consideration rehire, no; no notice, no call no show for three days.
Q: But where does it say that he was fired for committing the group A violation?

MR. PRESNELL: Object to form; asked and answered.

THE WITNESS: Doesn't

Q: BY MS. MOLINA: Okay. So this form reports or discloses Mr. Lopez's termination as a voluntary termination; is that correct?
A: That's what's checked.
Q: Okay. Even though he committed a group A violation, which called for discharge; is that correct?
A: Yes.
Q: Okay. When you signed this termination notice, sir, on page 163 of Exhibit G, did you question that, why Mr. Lopez would be allowed to voluntarily resign when he had committed a group A violation?

MR. PRESNELL: Object to form.

THE WITNESS: No, I did not.

Q: BY MS. MOLINA: Why not?
A: I don't recall. This is four days after that I signed it.

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Q: Four days after that you signed what?
A: The 14th.
Q: You're reading the date of January 14, 2001, on your -- next to your signature --
A: Right.
Q: -- is that right, on page 163?
A: Yes.
Q: So -- so -- what's that got to do with why you didn't ask why, if this employee missed three days consecutive --
A: Well, I looked on -- right here where it says no notice, no call no show three days, and we know no call no show, you know, is a termination?
Q: So a no call no show for three days -- no call -- so Mr. Lopez was able to blow off work for three days in a row, not even call his supervisor, and he was allowed to voluntarily resign, or at least this form shows he voluntarily resigned?

MR. PRESNELL: Object to form.

THE WITNESS: That's what's checked here, but on the bottom is what states why.
Q: BY MS. MOLINA: But according to this form, he was not fired for not showing up to work three days in a row and failing to notify anybody; is that right?

MR. PRESNELL: Object to form.

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THE WITNESS: There's nothing that says fired on the form, no.
Q: BY MS. MOLINA: Okay. Now, do you have an explanation, sir, since you signed off on his termination notice, why there's a resignation statement on November 28, 2001, and then a resignation statement for December 17, 2001?

A: No, I do not.
Q: Okay. Now, there's a DSN in here for Arturo Lopez -- Mr. Lopez -- let's see. Mr. Lopez committed -- well, according to the documents -- according to the documents that we have in this exhibit, November 28 Mr. Lopez had not returned to work or called anyone for over a week; December 27, it shows that he had missed three days consecutively without notifying the company; on May 9, 2001 -- and I'm looking on page 195 -- he was written up for -- it was categorized as a group C, failure to carry out normal assigned duties for an incident which included him not following instructions to work the load. Do you see that?
A: Yes.
Q: And these were instructions after he had been asked twice to do his job or to carry out a particular task; do you see that? And he didn't do it; do you see that?

EXHIBIT O

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Civ-02-1644
JOB/RHS (ACE)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,	)
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, d/b/a PHOENIX COCA-COLA BOTTLING COMPANY and COCA-COLA BOTTLING COMPANY OF ALBUQUERQUE, Defendant.	)

AFFIDAVIT OF JAMES YOUNG

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, James Young, duly sworn, hereby state as follows:

1. My race is that of African American

2. I worked as a Merchandiser for Coca-Cola Bottling Company of Albuquerque from October 1995 until October 2000.

3. During my employment with Coca-Cola Bottling Company of Albuquerque, Cesar Grado was my District Sales Manager for approximately 3-6 months.

4. During my employment with Coca-Cola Bottling Company of Albuquerque, Cesar Grado was not my immediate supervisor. I reported directly to Dave (LNU), and before that I reported directly to Edward Esquibel.

5. During my employment with Coca-Cola Bottling Company of Albuquerque, I personally observed how Cesar Grado treated the employees.

6. African American employees were treated worse by Cesar Grado as compared to non-African American employees.

7. During my employment with Coca-Cola Bottling Company, I never received any training regarding race discrimination.

8. I recall speaking with Sherry Pedersen on several occasions regarding employment issues such as insurance and W-2 forms.

9. I left employment with Coca-Cola Bottling Company because of Cesar Grado. When he became the District Manager he began "nit-picking" my work and constantly threatened to change my days off and to change my route. I did not witness Mr. Grado treat non-African American employees in this manner. For example, Mr. Grado threatened to change my day off one time when the back room of a store that I serviced was a bit messy during a particularly busy time. I witnessed many times Damien Mirabal's back room being very messy and it was never an issue with Mr. Grado.

I swear under penalty of perjury that the foregoing testimony is a true and correct statement of the facts.

DATE: 3/12/04 /s/_____
James Young

SUBSCRIBED AND SWORN to before me on this 12th day of March 2004 by James Young.

My Commission Expires:
4/26/06 /s/_____
Notary Public

EXHIBIT P

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Civ-02-1644
JOB/RHS (ACE)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff,

BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, d/b/a PHOENIX COCA-COLA BOTTLING COMPANY and COCA-COLA BOTTLING COMPANY OF ALBUQUERQUE,
Defendant.

AFFIDAVIT OF BRYAN ESQUIBEL

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, Bryan Esquibel, duly sworn, hereby state as follows:

1. My National Origin is that of Hispanic.

2. I worked for Coca-Cola Bottling Company of Albuquerque from March 12, 1998 until I was terminated

in April 24, 2002. During my employment I held a driver position and a merchandiser position.

3. During my employment with Coca-Cola Bottling Company of Albuquerque, Cesar Grado was the District Sales Manager.

4. During my employment with Coca-Cola Bottling Company of Albuquerque, I personally observed how Cesar Grado treated the employees.

5. African American employees were treated worse by Cesar Grado as compared to non-African American employees.

6. If Grado did not like you, he treated you badly; but African American employees were treated even worse.

7. Stephen Peters was treated badly by Cesar Grado.

8. I am aware of employees at Coca-Cola Bottling Company not following directives, and who were not fired: Javier Barboa, Leroy Sanchez, Marcos Vega, Dominique Chavez, Cameron Ward, and Adolfo Perez. These employees would do whatever they wanted to do, and would not get fired.

9. During my employment with Coca-Cola Bottling Company, I never received any training regarding race discrimination.

I swear under penalty of perjury that the foregoing testimony is a true and correct statement of the facts.

DATE: 3/12/04 /s/_____

Bryan Esquibel

SUBSCRIBED AND SWORN to before me on this 12th day of March 2004 by Bryan Esquibel.

My Commission Expires:
12/12/06

/s/_____
Notary Public

EXHIBIT Q

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Civ-02-1644
JOB/RHS (ACE)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,	)
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, d/b/a PHOENIX COCA-COLA BOTTLING COMPANY and COCA-COLA BOTTLING COMPANY OF ALBUQUERQUE, Defendant.	)

AFFIDAVIT OF MICHAEL WILSON

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, Michael Wilson, duly sworn, hereby state as follows:

1. My race is that of African-American.

2. In 1997 I was hired by Bill Donnelly as a Merchandiser for Coca-Cola Bottling Company of Albuquerque. I held that position until I resigned in 2000.

3. During my employment with Coca-Cola Bottling Company of Albuquerque, my direct supervisor was Edward Esquivel, who then reported to Cesar Grado.

4. It was my understanding and practice that if I was unable to work on a particular day, Edward Esquivel was the person who I notified regarding my absence.

5. I recall many race-based remarks made to me by Cesar Grado during work hours, these include:

   A. Telling me that Black guys did not look good in trucks, they should drive Cadillacs;

   B. Telling jokes regarding Black men dating Anglo women;

   C. One day during the winter, Cesar Grado ordered me to clean an outside vending machine (which is not the duty of a Merchandiser) and while he watched me work, he remarked that the "brothers" don't like the cold so I should hurry up and finish as soon as possible.

6. During my tenure with Coca-Cola Bottling Company Of Albuquerque, I applied for a sales position within the company. When I attempted to follow-up on the application I had submitted by hand to Human Resources, I was told that my application was never received, therefore I was not considered for the sales position. The position was given to an Hispanic male.

7. It is my belief that Cesar Grado dislikes African Americans based on his treatment of me during my employment at Coca-Cola Bottling Company of

Albuquerque. While he treated Hispanic Merchandisers with respect, he continually demeaned me and threatened to replace me. In addition, I observed that Cesar Grado was unusually picky regarding the stores serviced by me and the two other African American Merchandisers, often calling us back to stores that had been serviced to redo some minor detail, while the Hispanic Merchandisers were not subject to this same level of scrutiny.

8. I resigned my position at Coca-Cola Bottling Company of Albuquerque due in part to Cesar Grado's race based remarks to me, his continual threats to fire me, and his unusually high level of scrutiny regarding my work to which Hispanic Merchandisers were not subjected.

I swear under penalty of perjury that the foregoing testimony is a true and correct statement of the facts.

DATE: 3-12-04 /s/_____
Michael Wilson

SUBSCRIBED AND SWORN to before me on this 12th day of March, 2004 by Michael Wilson.

My Commission Expires:
12/12/06 /s/_____
Notary Public

EXHIBIT R

NEW MEXICO DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE BUREAU
P.O. BOX 1728
ALBUQUERQUE, N.M. 87103

NOTICE OF CLAIM DETERMINATION

STEPHEN R PETERS
208 FENTIMAN
ALBUQUERQUE NM 87105

YOU TERMINATED STEPHEN R PETERS AFTER BEING NOTIFIED OF AN INABILITY TO REPORT FOR WORK AS SCHEDULED. THE REASON FOR FAILURE TO REPORT FOR WORK WAS BEYOND THE CONTROL OF YOUR FORMER EMPLOYEE. AS AN EMPLOYER YOU HAVE THE RIGHT TO DISCHARGE AN UNSATISFACTORY EMPLOYEE BUT UNLESS MISCONDUCT IS ESTABLISHED, NO DISQUALIFYING CONDITIONS EXIST. THIS CLAIM IS CLEARED UNDER SECTION 51-1-7(B) OF THE UNEMPLOYMENT COMPENSATION LAW EFFECTIVE WITH THE CALENDAR WEEK ENDING 10/06/01. YOUR ACCOUNT IS LIABLE FOR BENEFIT CHARGES FOR BENEFITS PAID BASED ON THIS PERIOD OF EMPLOYMENT UNDER SECTION 51-1-11(B) OF THE UNEMPLOYMENT COMPENSATION LAW.

BCI COCA-COLA BOTTLING CO LOS ANGELES
1334 S CENTRAL AVE
LOS ANGELES CA 90021

APPEAL RIGHTS

This determination is final unless an appeal is filed WITHIN FIFTEEN CALENDAR DAYS from OCTOBER 19, 2001.

APPEAL PROCESS

An appeal can be filed at your nearest Workforce Development Center or by mail to the New Mexico Department of Labor, Appeals Tribunal Section, P.O. Box 1928, Albuquerque, N.M. 87103. If you appeal by mail, please include your social security number. If the fifteenth day falls on a weekend or holiday, you have until the following work day to file the appeal. The time limit may only be otherwise extended by the Appeals Section on a showing of good cause. The Workforce Development Center can also provide additional information or assistance in filing an appeal.

NOTE TO CLAIMANT

If you are unemployed while your appeal is pending, continue to file continued claims. If the final decision holds you eligible, you can be paid only for those weeks for which you have filed claim notifications and met all other eligibility requirements.

If your employer challenges a decision allowing [illegible] the appeal decision is in his favor, you will be required to repay the benefits paid [illegible] period you are denied.

EXHIBIT S

EXCERPTS OF DEPOSITION OF STEPHEN BRIAN PETERS

[p.69]

Q. Were you ever involved at the decision-making level regarding the discipline of an employee between 1999 and 2001?
A. No, sir.
Q. Were you ever involved in a meeting with any decisionmaker regarding the discipline of another employee between 1999 and 2001?
A. No, sir.
Q. Do you have any firsthand knowledge of any discipline that was imposed upon any employee between 1999 and 2001, other than yourself?
A. As far as, could you explain that?
Q. I'm asking if you have any firsthand knowledge of the implementation or imposition of discipline on other employees.
A. No, sir.
Q. Okay. Did you ever supervise Monica Lovato?
A. No, sir.
Q. Did you ever supervise Damien Mirabel?
A. No, sir.
Q. Did you ever supervise Arturo Lopez?
A. No, sir.
Q. Okay. Were you ever involved in the decision-making process with respect to discipline of employees Lovato, Mirabel and Lopez?

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A. Involved, you say?
Q. In the decision -- yes, involved in the decision-making process.
A. No, sir.
Q. The district sales manager you worked under was Cesar Grado?
A. Yes, sir.
Q. Is that true for the entire time of 1999 through 2001?
A. I don't know if it was 1999. It might have been 2000 and 2001, if I'm not mistaken.
Q. May have been the years 2000 and 2001?
A. Yes, sir, if I'm not mistaken.
Q. All right. Who was the district sales manager that you worked under, then, in 1999, prior to working for Mr. Grado.
A. Bill Donnelly.
Q. Do you know why your district sales manager changed from Mr. Donnelly to Mr. Grado?
A. No, sir.
Q. Between 1999 and 2001, who made the weekly schedules for merchandisers?
A. If I'm not mistaken, I think it was Cesar Grado.
Q. Between 1999 and 2001, who approved vacation or days off for merchandisers?

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A. The immediate supervisor, if I'm not mistaken.
Q. Okay. Do you know?
A. I would always go to my immediate supervisor.
Q. All right. Maybe I asked it poorly. I'm asking who approved vacation days or days off for merchandisers between 1999 and 2001.

A. The immediate supervisor, whoever your immediate supervisor was. That's who I went to.
Q. Okay. And who was your immediate supervisor?
A. It changed.
Q. What do you mean, it changed? It changed between 1999 and 2001?
A. Yes.
Q. Is there a form, an approval form for vacation days at Coca-Cola Bottling Company?
A. I can't recall if I filled out a form or if it was just notice. I think it was -- I would give my supervisor notice.
Q. Did it have to be written notice?
A. Yes. I think it was a form we had to fill out, if I recall.
Q. Between 1999 and 2001, did you take some vacation?
A. Yes, sir. If I recall, I had. If I had it, I took it.

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Q. If you had it, you took it?
A. Yeah.
Q. Well, you had it, didn't you?
A. Yeah.
Q. All right. And your memory is, you filled out some sort of form for certain days, whatever vacation --
A. If I recall, yes.
Q. Okay. You said that your stores on your route changed --
A. Uh-huh.
Q. -- at some point between 1999 and 2001; is that correct?
A. Uh-huh.
Q. Yes?
A. Yes, sir. Sorry.
Q. That's all right. And I believe you said you couldn't remember exactly when it changed; is that true?
A. Yes, sir.

Q. Okay. As of October 2001, before your termination, what stores were on your route?

MS. MOLINA: Object to the form of the question. It's very ambiguous. Could you provide more of a time frame other than as of October 2001?

Q. (By Mr. Presnell) Can you answer the question?

A. If I'm not mistaken, I think it was Albertsons

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on Lomas and Juan Tabo, Furr's on Lomas and Tramway -- let me think here for a minute. It's been so long. Furr's on Candelaria and Juan Tabo, and I think it was the Walgreens on Eubank, if I'm not mistaken.

Q. Okay. Albertsons, that's a supermarket?

A. Yes, sir.

Q. You had two Furr's stores?

A. Yes, sir.

Q. And what are those? Supermarkets?

A. Supermarkets, yes, sir.

Q. And one Walgreens location?

A. Yes, sir.

Q. Okay. Four stores?

A. Yes, sir.

Q. Okay.

A. Might have been five, if I'm not mistaken.

Q. Might have been one more?

A. Might have been.

Q. Is there a Raley's out here?

A. Yeah. That's what I was thinking, if I had that Raley's at that time or not. I can't recall.

Q. But at some point, you had a Raley's?

A. Yes, I had a Raley's.

Q. Describe for me just a normal day in your work life as a merchandiser with these stores.

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A. Hard work.
Q. Take me from the time you get up, where you go, where you report, through the end of the day, just in general.

MS. MOLINA: I'm going to object to the form of the question, overbroad, vague, ambiguous. But go ahead.

A. From 5:00 in the morning until whenever, you go do your stores, merchandise your stores, from store to store, sometimes second service, most of the time without a lunch.
Q. (By Mr. Presnell] Would you report to the Coca-Cola facility before you went to your stores?
A. Yes, sir.
Q. Okay. So the first place you go every morning is to the facility?
A. Yes, sir.
Q. And what do you do at the facility?
A. Clock in by telephone.
Q. Clock in by telephone.
A. Yes, sir.
Q. All right. Do you do anything else at the facility?
A. At the end of the day, you clock out.
Q. Okay. I'm sorry. In the morning.
A. In the morning?

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Q. When you first get there.
A. Merchandise.
Q. Okay. You clock in?
A. Yes, sir.
Q. And then what do you do? You leave the facility and go to your first store?

A. No. You clock in at your first store. Say if I have an Albertsons, I go to my Albertsons, and I'll b there at 5:00 in the morning.
Q. Okay.
A. I get the telephone in the Albertsons, I punch the number in, the Kronos and then my Social Security number, and it automatically clocks me in. Then I hang the phone up.
Q. Okay. So you do not go to the Coca-Cola facility here in Albuquerque first?
A. No, sir. We used to.
Q. You go straight to your first store?
A. Yes, sir.
Q. Okay. I'm sorry. And you clock in by telephone?
A. Yes, sir.
Q. And then you begin merchandising?
A. Yes, sir.
Q. I imagine some days it takes longer than other

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days at other stores?

MS. MOLINA: Object to the form of the question.

Q. (By Mr. Presnell) Is that a fair statement?
A. Yes.
Q. Depends on what's going on?
A. Yes, sir.
Q. Depends on how much product is there and how much product is not there, that type of thing?
A. Yes, sir.
Q. Every day is a little different?
A. Yes, sir.
Q. Okay. When you finish working your first store, let's just say it's Albertsons for purposes of our discussion, you then go to your second store?
A. Yes, sir.

Q. And do the same thing?
A. I merchandise, but I don't clock in. You don't clock in? No, sir.
Q. You merchandise?
A. Yes, sir.
Q. You don't clock out again --
A. Until the end of the day.
Q. All right. Once you leave that first store, do you ever go back to that store?

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A. I would have to go down a list.
Q. Okay.
A. It could be Jeff Katt; could be Eddie Esquivel; could be Dave Lucero; it could be Melanie, I can't think of her last name; could have been Tony Stephenson; could have been Steve Jaramillo; it could have been Billy Priest; it could have been -- let me think. Those are all my supervisors since I'd been there.
Q. Okay. Well' let me stop you just a minute. These four stores that you identified for me -- Albertsons, the two Furr's locations and Walgreens -- was there an account manager on each of those stores?
A. Not -- one account manager for all of the stores.
Q. One account manager for each store?
A. Yes, sir.
Q. Are you saying that the same account manager covered all four of those stores?
A. Yes, sir.
Q. All right. As of October 2001, who was that?
A. Jeff Katt.
Q. All right. Did you ever have a route where you had stores that had more than one account manager?
A. Yes, sir.

Q. Okay. For instance, if you had four stores, two

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of them could have been run by account manager Jeff Katt?
A. Uh-huh.
Q. The other two could have been run by a different account manager?
A. Yes, sir.
Q. But you still merchandised all four stores?
A. Yes, sir.
Q. All right. That happened in your career?
A. Yes, sir.
Q. Okay. Do you know what the job duties of an account manager were as of October 2001?
A. Take the orders for the stores, bring POS to the stores, point of sale, and try to get displays up front, things of that nature.
Q. Okay. Did account managers, as a general rule, do any merchandising?
A. I've seen some.
Q. But that's not really part of their daily function, is it?
A. No.
Q. All right. And do account managers, or did account managers in 2001, deliver product to these stores?

MS. MOLINA: Object to the form of the question, overbroad, vague, ambiguous. Go ahead.

A. Deliver product?

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Q. (By Mr. Presnell) Yes.
A. I may have seen some account managers bring some cases of soda in their vehicle.
Q. But generally, who delivered the product?

A. Truck drivers.
Q. Truck drivers?
A. Yes.
Q. Did you drive your own vehicle to these stores?
A. Yes, sir.
Q. At the end of your day, then, when you're calling to check out, I guess, and let the supervisor know that you've finished and whether or not you need to do anything else, did you ever call Cesar Grado?
A. No, sir.
Q. Never did?
A. I called my immediate supervisor.
Q. Okay.
A. Only if my immediate supervisor wasn't around or in town.
Q. You only called Cesar Grado if your immediate supervisor was not around or not in town?
A. Yes, sir, on vacation or something like that.
Q. Okay. How does an account manager know what stores that he doesn't manage, what the needs of those stores are?

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A. Now, what's that?
Q. How do account managers know what the needs of other stores are that they do not manage?
MS. MOLINA: Object to form, calls for speculation. Go ahead.
A. That they do not manage?
Q. (By Mr. Presnell) Correct.
A. All the stores are managed under someone.
Q. Okay.
A. All of them have account managers.
Q. Correct. But they don't all have the same account managers.

A. No, sir.
Q. Is that true?
A. Yes, sir.
Q. Okay. So how does one account manager know what the needs are of stores for which he is not the account manager?
MS. MOLINA: Object to form, calls for speculation.
A. That's not his concern. If he's not the account manager of a store, he's only supposed to do his stores. I mean, other stores, he's not accountable for that.
Q. (By Mr. Presnell) So one account manager, then, really is only responsible for and knows what merchandiser

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Q. All right. Why did they, if they have annual performance reviews, do you know why Sundancer gave you raises earlier, prior to that?
A. Yes, sir.
Q. Why?
A. Because the owner of the company came to me and told me I was doing a wonderful job and I was one of the best employees, so he gave me a raise, too.
Q. What do you mean, "too"?
A. Well, not "too." Of me.
Q. Okay.
A. Well, "too'" I meant "too" as far as the raise that Trong gave me for moving up to doing another position.
Q. I see.
A. That's what I meant by "too."
Q. So one of the raises was when you moved from the shiner position to the molder position?
A. Yes, sir.
Q. Okay. And then you got an additional raise on top of that from the owner?

A. Yes, sir. The owner came directly to me and gave me a raise.
Q. What's his name again?
A. Steven Stacy.

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Q. And then your third raise was your annual raise?
A. Yes, sir.
Q. All right. I understand. You do expect to at least get an annual review every year; is that fair?
A. Yes, sir.
Q. May or may not get a raise?
A. May or may not.
Q. Hope you do?
A. Hope I do.
Q. Were you ordered to work on Sunday, September 30th, at Coca-Cola Bottling Company of Albuquerque?
A. I was asked to work.
Q. Were you ordered to work on Sunday, September 30th, 2001?
A. I was asked to. I was asked to work.
Q. You were asked to work by who?
A. Cesar Grado.
Q. Did Mr. Grado order you to work on Sunday, September 30, 2001?
MS. MOLINA: Asked and answered.
A. Excuse me?
Q. (By Mr. Presnell) Did Mr. Grado order you to work on Sunday, September 30, 2001?
A. He asked me to work.

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Q. Okay. I understand you're saying he asked you. Are you telling me that he did not order you to work on that day, September 30, 2001?
A. Like I said, he asked me, told me or asked me.
Q. Did Mr. Grado ever give you a direct order to work on September 30, 2001?
A. He called me.
Q. Okay. When did Mr. Grado call you?
A. I think it was on a Friday.
Q. What date?
A. The 28th.
Q. September 28, 2001?
A. Yes, sir, if I'm not mistaken.
Q. Okay. Where were you when he called you?
A. I was at -- if I'm not mistaken, I was at one of my grocery stores. If I'm not mistaken, I think it was Raley's.
Q. September 28, 2001 was a Friday.
A. Yes, sir.
Q. Did you work that day?
A. Yes, sir.
Q. Did Mr. Grado call you at the store or on your cell phone while you were at the store?
A. He paged me.
Q. He paged you?

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A. Yes, sir.
Q. Did you call him back?
A. Yes, sir.
Q. Immediately?
A. Yes, sir.
Q. What time of day was it?

A. If I'm not mistaken, it might have been close to noontime, 1:00, something like that, if I'm not mistaken.
Q. Approximately?
A. Approximately.
Q. Okay. Had you completed approximately half of your day by that time?
A. Yes, sir.
Q. And what did Mr. Grado say when you called him back?
A. He said, "I need you to come in on Sunday to work."
Q. Okay. Sunday being September 30, 2001?
A. Yes, sir.
Q. All right. When you called Mr. Grado, did you call him on his office phone or cell phone?
A. Cell phone, if I'm not mistaken.
Q. All right. Do you know where Mr. Grado was physically?
A. No, sir.

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name.
Q. You mean a person or a hospital or clinic?
A. No, it's -- I can't think of it. I know where it's at, but I can't think of the name right now.
Q. Where is it?
A. It's off the freeway, right next to -- let me think. Down there by Petsmart, that big building down there. I can't think of the name, I can't think of what it is. Blue Cross Blue Shield.
Q. Okay. What does she do there?
A. She's on the computer, I guess, whatever they do with claims or whatever.
Q. Okay. How long has she been working there?
A. I don't know how long.
Q. A few months, or longer?

A. Oh, no, longer than that, yeah.
Q. Okay. What's her telephone number?
A. 270-3537.
Q. Is that home?
A. Cell number.
Q. Okay. Does she have a home line?
A. Yes. I have it programmed in my phone. I don't know it off the top of my head, her house number.
Q. Okay. Do you usually communicate with her by cell phone?

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A. Yes, sir.
Q. After September 28, 2001, when was your next communication with Mr. Grado?
A. After -- excuse me?
Q. After your conversation with Mr. Grado on September 28, 2001, when was your next communication with Mr. Grado?
A. That Monday.
Q. October 1, 2001?
A. Yes, sir.
Q. Where were you?
A. At work, at a meeting for -- a health meeting, if I'm not mistaken.
Q. This is at the plant?
A. Yes, sir.
Q. Did you work Monday, October 1?
A. Yes, sir.
Q. Did you do your merchandising that day?
A. Yes, sir.
Q. All your stores?
A. Yes, sir.
Q. That morning, you just had a meeting regarding some health issues?

A. No, it wasn't that morning. It was that evening.

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Q. All right. I'm sorry.
A. I worked all day.
Q. You worked all day?
A. I worked from 5:00, if I'm not mistaken, until 5:00.

Q. Okay. And then you went to a meeting?
A. Yes, sir.
Q. All right. What kind of meeting was it?
A. I think it was for health insurance, if I'm not mistaken.
Q. Okay. And this is back at the Coca-Cola facility?
A. At the plant, yes.
Q. And you saw Mr. Grado there?
A. Yes, sir.
Q. All right. Did you talk to him by phone that day, October 1, 2001?
A. I can't recall that I had. Huh-uh, no, sir, I don't think so.
Q. All right. Did you have a conversation with Mr. Grado that evening?
A. Yes, sir.
Q. Tell me the substance of the conversation.
A. I was sitting in the meeting, and Mr. Grado walked up to me and said, "I need you to be down at the

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plant at 8:00 in the morning."
And I said "Okay."
Q. Okay.
A. And that was it.
Q. That was it?
A. Uh-huh.

Q. Did he tell you why?
A. He didn't tell me why, no, sir.
Q. Did you ask why?
A. I didn't ask why, no. He just said to meet him at the plant. He walked by and he stopped. It was during the meeting.
Q. Okay.
A. He just told me, "Meet me down at the plant at 8:00 tomorrow morning."
Q. What did you say?
A. I said "Okay," and he walked away.
Q. Okay. Anything else involved in that conversation?
A. No, sir.
Q. All right. Did you talk to Mr. Grado on any other occasion that day, October 1, 2001?
A. I can't recall.
Q. Did you talk to Mr. Grado on Saturday, September 29th, 2001?

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A. No, sir.
Q. Did you talk to Mr. Grado Sunday, September 30th, 2001?
A. No, sir.
Q. Did you meet Mr. Grado at 8:00 on Tuesday, October 2, 2001?
A. Actually, I called him and told him I was running a little behind because I was building a display, and I think it was actually like 8:45. I told him I was going to be a little bit late. I think I arrived at 8:45, if I'm not mistaken, maybe 9:00.
Q. All right. That morning, though?
A. Yes, sir.
Q. And where did you meet Mr. Grado?
A. Down at the plant, in Sherry Peterson's office.
Q. All right. In Ms. Peterson's office?

A. Yes, sir.
Q. All right. Who was present?
A. Cesar Grado, Don Bonaluna and Sherry Peterson.
Q. Who is Don Bonaluna?
A. Don Bonaluna is the branch manager, if I'm not mistaken.
Q. Okay.
A. He's Cesar's boss.
Q. All right. The three of them were there and you

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were there?
A. Yes, sir.
Q. Anybody else there?
A. No, sir.
Q. All right. Did you tape this meeting?
A. No, sir.
Q. Tell me about the meeting. What happened?
A. I walked in, and Cesar asked me, "Do you know why you're here?"

I said, "I do not."

He said, "You've been terminated for insubordination, for not showing up for work." Then he said, "I need your badge, I need your pager, and you can turn your uniforms in when you get them all together."
Q. Did Mr. Bonaluna, did he say anything at this meeting?
A. I can't recall him saying anything.
Q. Did Ms. Peterson say anything at this meeting?
A. I can't recall Ms. Peterson saying anything, either.
Q. Okay. Did you say anything at this meeting?
A. Yes, sir.
Q. What did you say?
A. After he told me that I was terminated and he said for insubordination for not showing up for work, I

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told him that I had reported off work because I wasn't feeling well, I was sick, and I reported off to my immediate supervisor, who didn't have a problem with me calling in sick because I went to the doctor. Neither one of them asked me why I didn't show up for work, like did I have a flat tire, was someone sick in the family. Neither one of them gave me the opportunity to explain. All they done was hand me the termination paper and that was it.

Q. Okay.

A. But after I told them that, they all got quiet. And when I left they shut the door and was in there talking.

Q. Okay.

A. They didn't give me --

Q. All right. So Mr. Grado said "You're terminated for insubordination"?

A. Yes, sir.

Q. Your response was that you were sick; is that right?

A. Yes, sir.

Q. Okay. And did Mr. Grado or Ms. Peterson say anything in response to your statement?

A: No, sir.

Q. Didn't speak another word?

A. Didn't -- no, sir, not that I recall. They

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didn't say anything. That was it.

Q. Did they say, "Goodbye, have a nice day"?

A. They maybe said, "I need you to sign this paper," the paper that you have over there, to sign a paper.

I said, "I'm not signing it because I wasn't insubordinate."

They said, "It's not admitting guilt." Because I wanted a

copy. So they said the only way I could get a copy was if I signed it. So that's why I signed, because they said I did not get to get a copy of that paper.
Q. Okay. Did you say anything else at that time?
A. I can't recall. I think that's when I told them, "Neither one of you asked me why I didn't even show up for work." I told them, "You'll be hearing from my attorneys." I think that's the last thing I told them.
Q. You told them that they would be hearing from your attorneys?
A. Yes, sir.
Q. Was anything else said in this meeting?
A. That's all I remember.
Q. Okay. And then you left?
A. Yes, sir.
Q. And where did you go?
A. Home.

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A. No, sir.
Q. Do you keep a calendar of any kind?
A. A calendar, I might have a little calendar on the refrigerator or something like that.
Q. Did you call the girls in Las Cruces to tell them you weren't coming?
A. My cousin probably did that.
Q. But did you?
A. No' I didn't.
Q. Had you already packed for the weekend trip?
A. It was only going to be a couple days. Just a couple pair of pants and things like that.

Q. Did you have to unpack that day; do you remember unpacking on Saturday the 28th?
A. No. It wasn't much I was going to take as far as packing and unpacking.
Q. Well you had to pack something.
A. Yeah, I mean a couple pair of pants and shirts and stuff like that.
Q. Do you remember unpacking on Saturday?
A. I don't remember unpacking, no, sir.
Q. Okay. So late afternoon or early evening, you go see a physician or some sort of health care provider?
A. Yes, sir.
Q. Who did you go see?

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A. I can't think of the doctor's name.
Q. Okay.
A. I don't have a primary.
Q. All right. Where did you go?
A. I went to Presbyterian on Isleta and Rio Bravo.
Q. Is that the medical center or the hospital?
A. That's the medical center.
Q. And what did you do? You went in the doors?
A. I just went in, sat down, filled out the paper to be seen, and that was it.
Q. Did you make an appointment prior to going?
A. No, sir. It's like emergency, like where you just walk in.
Q Okay. It's an emergency room?
A. What do you mean by "emergency room"?
Q. I guess I have a distinction between an emergency room and a walk-in clinic.
A. Uh-huh.
Q. An emergency room, for instance, is where an ambulance would bring an accident victim.

A. Oh, no. It wasn't -- I mean -- no. I mean, it's a facility where you go in, you sign and you wait to be seen by a doctor.
Q. Okay. I understand. All right. And you did that?

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A. Yes, sir.
Q. How long is it open?
A. It's open until, if I'm not mistaken, maybe 7:00, 8:00 in the evening. Maybe from 9:00 until 8:00, if I'm not mistaken.
Q. Okay. At what time of day on Saturday did you decide to go to the doctor?
A. It was in the evening, if I'm not mistaken.
Q. You made a decision late afternoon or early evening, and you went?
A. Yes.
Q. All right. And did you see a doctor or a nurse or physician's assistant or --
A. I went in the room, there was an assistant, and then a doctor come to see me.
Q. Was the assistant a nurse?
A. If I'm not mistaken.
Q. Was it a female?
A. Yes.
Q. Did she take down some notes from what you told her was wrong with you?
A. Yes.
Q. All right. And what did you tell her was wrong with you?
A. I told her that I wasn't feeling well, headache,

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sinuses, things of that nature.
Q. Okay. Did you have a cough?

A. Did I have a cough?
Q. Yes.
A. Yes, sir. If I recall I think I was coughing.
Q. Okay. Did you tell the nurse you were coughing?
A. I can't recall what all I told her. I just told her what I told you, as far as I wasn't feeling well as far as headache, sinuses, fatigued.
Q. Did you have a fever?
A. I was running -- I'd say I had a fever because, like I said, I wasn't feeling well. I mean' you know --
Q. Did either the nurse or the physician that you saw take your temperature?
A. I can't recall if they did, if they took my temperature or not.
Q. Did they take your blood pressure?
A. I think they did.
Q. Did they get a blood sample?
A. They didn't get a blood sample, no.
Q. Okay. The doctor that saw you -- well, I assume it's a doctor. Was it a doctor?
A. Yes, sir.
Q. All right. Was it a male or female?
A. Female.

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Q. Do you know her name?
A. No, sir.
Q. What did she do when she came in?
A. She came in and asked me what was my symptoms and everything, and I told her. And she checked my ears and if I recall, my nose and mouth. You know how doctors probe you. She did all that, and that was it.
Q. Okay. Did she give you a diagnosis?

A. Yes. She said I had a sinus infection.
Q. Did she give you any treatment for that?
A. Yes, she gave me to go get a prescription.
Q. Did anything else happen at this doctor's visit?
A. Excuse me?
Q. Did anything else happen at this doctor's visit?
A. No.
Q. Okay. Did she put any restrictions on you?
A. She was going to excuse me for Sunday, to not go in, with a doctor's excuse.
Q. You said she did?
A. Yes. She was -- she did, yes, she did. Excuse me.
Q. Did she give you a written-out prescription on a piece of paper?
A. I told her I didn't need one at that time, because the only one I needed was if I'd miss two or three

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days, and I didn't know if I would be feeling well enough to report to work on Monday.
Q. I'm talking about a prescription.
A. Yes, I got a prescription. She wrote out a prescription.
Q. That day?
A. Yes, sir.
Q. All right. And how did she know that you were going to work on Sunday?
A. I told her I wasn't feeling well and I had to be to work tomorrow. And she said that I had a sinus infection, and she said, "It looks like you're exhausted and overworked." That's what she said.
Q. Okay. And she did or did not give you an excuse from work that day?
A. Not that day. She was going to write me one, but I told her I didn't need a doctor's excuse, not unless I missed two

or three days. And I didn't know if I needed -- the thing about it, I didn't know if I was going to be able to report to work Monday or not, so I didn't get it at that time because I didn't know if I was going to report to work Monday or not, because I wasn't feeling well.
Q. She said you should be excused from work on Sunday?

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A. Yes, Sir.
Q. Did she say you should be excused from work on Monday, October 1?
A. No, sir, she really didn't say that.
Q. Did she say you should not go to work on Tuesday, October 2nd?
A. No, sir.
Q. Okay. All right. You got the prescription?
A. Yes, sir.
Q. And you left?
A. Yes, sir.
Q. Did you pay?
A. A co-pay.
Q. A co-pay. Did you pay that?
A. I paid some of it.
Q. How much did you pay?
A. I can't recall how much.
Q. Did you drive yourself to the doctor?
A. Yes, sir.
Q. Anybody go with you?
A. No, sir.
Q. What did you do after you left the doctor?
A. Went back home.
Q. Did you talk to your girlfriend that day?
A. I can't fecall. I probably did.

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Q. Did you see her that day?
A. I can't recall.
Q. You went home. Did you eat dinner that night?
A. I imagine. I can't recall.
Q Did you go out to dinner, or did you eat at I stayed home if I did eat.
And we're talking about Saturday night, September 29th, 2001, correct?
A. Yes, sir.
Q. All right. Did you leave the house again that night?
A. I can't recall if I did. I don't think I did. I stayed home.
Q. Well, you don't recall, or you stayed home?
A. I stayed home.
Q. You stayed home?
A. {Witness nods head.}
Q. You have a recollection of staying home that wasn't, feeling well, so --
A. But you do have a recollection of staying home that night?
A. (Witness nods head.)
Q. Yes?

* * *

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Q. And Ms. Lovato, what was her position?
A. Merchandiser.
Q. Who was Mr. Mirabal's supervisor?
A. Direct supervisor, or -- when you say "supervisor ....
Q. Well, did he have more than one?
A. Well, you're saying "supervisor'" but he was--
Cesar was my supervisor, but Jeff was my immediate supervisor.

Q. I'm talking about Mr. Mirabal's supervisor or supervisors.
A. At that time, like I said, I named all those names before. Jeff Katt, he was there, you know, and Cesar Grado. But like I said, the supervisors changed dramatically.
Q. Okay. Well' let me ask you this: Which supervisor of Mr. Mirabal, if you know, was responsible for his discipline?

MS. MOLINA: Object to the form of the question very vague' ambiguous' overbroad.

A. Was responsible?
Q. (By Mr. Presnell) Correct.
A. It's a chain of command. It works down as far as immediate supervisor and then his supervisor as far as who disciplines, you know.

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Q. All right. Well, first of all, do you know? Do you know who imposed any discipline, if any, upon Mr. Mirabal?
A. I don't know if he did get any discipline' if any.
Q. Okay. Mr. Lopez was a merchandiser. Who was his supervisor or supervisors?
A. At the time, Jeff Katt and Cesar Grado.
Q. Okay. And Mr. Sage, who was his supervisors? If you know.
A. I can't recall who his supervisor was.
Q. Was it Mr. Grado?
A. I think at one time, Mr. Grado was Mr. Sage's supervisor at one time.
Q. Do you know that for sure?
A. At one time or another, he was.
Q. You're certain of that?
A. I'm pretty sure.
Q. And Ms. Lovato, who was her supervisor?
A. Jeff Katt, Cesar Grado.

Q. What is the basis for you saying that Mr. Mirabal, Mr. Lopez, Mr. Sage and Ms. Lovato were treated differently?
A. Each one of them missed more days in one year than I probably missed in six and a half. Some missed so

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many days they were given a -- they were put on like --I can't think of it -- probation, they were put on probation. And the day after their probation, they would call in sick.
Q. Okay.
A. I missed two days in six and a half years, with a doctor's excuse, one time when my fiancee's son got killed in a car accident, and I got written up for going to his funeral, I mean --
Q. All right, I'm just talking -- I'm not talking about your discipline at this point. I'm asking you about the basis of your knowledge that these four individuals, Mr. Mirabal, Mr. Lopez, Mr. Sage and Ms. Lovato, were treated differently. You said because they missed more days than you?
A. Yes, and they didn't get treated as I did. They didn't get treated as horrific as I did, as malicious as I did.
Q. With respect to missing work?
A. As far as I know, just work attendance. Work attendance, even --
Q. Okay. Let me switch now to your statement that part of the evidence that you're aware of that supports the claim that you were terminated because of your race is that other African-Americans at Coca-Cola Bottling Company

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of Albuquerque were treated poorly by Mr. Grado.
A. Yes, sir.
Q. Who are those other African-Americans?

A. James Young, Mike Wilson, and I can't think of the other guy's name. It's been a while.
Q. You think there's one more?
A. Yes' sir.
Q. So you think there's three total?
A. His name is Nate. I can't think of Nate's last name.
Q. Nate. Anybody else?
A. There was another guy that I can't think of his name. He was having problems with Cesar Grado, too. But I may be able to find out his name.
Q. All right. How did Mr. Grado treat Mr. Young poorly?
A. He treated him poorly by switching his days off, switching his route, as far as, Mr. Young even applied for a higher position within the company and never even got interviewed. They claimed they lost his application.
Q. When you say "they," are we still talking about Mr. Grado, or are we talking about someone else now?
A. Well, whoever was in charge of -- whoever was in charge of doing the hiring. I'm pretty sure he had something to do with that.

* * *

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Q. Mr. Katt did?
A. Yes, sir.
Q. Okay. Was that before or after Mr. Grado's conversation with you on the 28th?
A. Before.
Q. Okay. What date was that conversation?
A. If I'm not mistaken, I think it was the same day, if I'm not mistaken.
Q. Earlier that morning?
A. I think so, if I'm not mistaken.

Q. All right. And did Mr. Katt call you?
A. Yes, sir.
Q. And what did he say?
A. He asked me if I could work on my day off, and I told him I had plans.
Q. Okay. And then the next call was from Mr. Grado?
A. Yes, sir.
Q. Okay. Except when you've told me today, have you understood all my questions?
A. Yes, sir.
Q. And did you answer the questions truthfully?
A. Yes, sir.

MR. PRESNELL: All right. Thank you very much for your time. That's all I have.

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MS. MOLINA: I have one follow-up question.
MR. PRESNELL: Go ahead.

EXAMINATION

BY MS. MOLINA:
Q. Mr. Presnell asked you about, he was asking you some questions about termination because of your race, as listed in the Complaint filed by the EEOC, and Mr. Presnell asked you about what evidence you had. And I think you made a statement to the effect of, no Afro-American was treated like you were for calling in sick. Do you recall that testimony?
A. Are you talking to me?
Q. Yes' I'm sorry.
A. Yes.
Q. Okay. When did you call in sick? What were you talking about when you said that?

A. I called in sick Saturday evening. I called Mr. Katt and reported off from work.
Q. In relation to your conversation with Mr. Grado on Friday, September 28th, when you say Saturday evening, is that the Saturday following that conversation?
A. Yes.
Q. Okay. So you called Jeff Katt; is that right?
A. Yes.
Q. Okay. Tell me about that conversation.

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A. I called Jeff Katt and told Mr. Katt that I wasn't feeling well, and I had just come from the doctor's, and I didn't think I would be able to make it to work. He said he didn't have any problems with that, and he told me if for any reason that -- because he was going to go do my stores for me, and for any reason if I felt better in the morning, to give him a call and let him know. I said okay.

MS. MOLINA: Okay. Thank you, sir.

FURTHER EXAMINATION

BY MR. PRESNELL:

Q. What time did you call Mr. Katt on September 29th, 2001?
A. It was late in the evening. I'd say maybe approximately maybe around 8:00, maybe.
Q. Did you talk to him directly, or leave him a message?
A. I talked to him directly.
Q. Where did you call him, at home or on the cell phone?
A. At home.
Q. Was anybody with you on your end of the line?
A. No, sir.
Q. Okay. Did you call Mr. Grado on the evening of September 29, 2001?

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A. Yes, sir -- no, not Mr. Grado, no, sir.
Q. Okay. Did you call Mr. Grado at any time on Sunday, September 30, 2001?
A. No, sir.
Q. Okay.
A. I only called my immediate supervisor.

MR. PRESNELL: Okay. That's all I have.

MS. MOLINA: We'll read and sign.

(The deposition concluded at 1:39 p.m.)

EXHIBIT T

EXCERPTS OF DEPOSITION OF CESAR M. GRADO

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Q. Okay. And the merchandisers, what do merchandisers do?
A. Merchandisers are essentially stocking positions. They fill shelves with Coca-Cola. They fill displays, racks, coolers.
Q. Anything else?
A. They work in a team environment with the account manager.
Q. What do you mean by that?
A. That they work together. They are in constant communication of what's going on in the accounting.
Q. Okay. Is there one merchandiser -- is there -- is it a one-on-one thing, one merchandiser with one account manager, or is it several merchandisers working with one account manager?
A. What are you asking me, if that's the way I have them teamed up?
Q. With regards to your -- your testimony concerning merchandisers work in a team environment --
A. Right.
Q. -- with account managers --
A. Right.
Q. -- tell me about that. How -- tell me about how they work in a team environment with an account manager.

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A. I'm trying to think. I had an account manager teaming up with two merchandisers to cover a route.
Q. How many account managers are under your supervision?

A. Now?
Q. Yeah.
A. I have five.
Q. Five account managers?
A. Yes.
Q. And who are they?
A. I have Bobby Armijo, David Crespin, David Lucero, David Goodman, and Augustine Villegas.
Q. How many merchandisers do you have?
A. I have nine merchandisers.
Q. And who are they?
A. Let's start from the top here. I have Monica Duran, Geneva Romero, Travis Curry, Abraham Angala, Felix Moreno, Toby Saavedra -- Toby Saavedra. How many is that, six? I have Jaime Carrillo, Lesperanza Aragon, and Ray Gallo.
Q. Gallo?
A. Ray, Ray Gallo?
Q. G-a --
A. L-l-o.

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Q. Okay. Which merchandisers are teamed up with which account managers?
A. I, I really can't answer that without having a schedule in front of me.
Q. So does the teaming up change with each schedule?
A. Yes, it does.
Q. And how often does the schedule change?
A. Not very often.
Q. How often do you make up the schedule?
A. I, I make it every week.
Q. Every week?
A. Yeah.

Q. Okay. So for this week, who are the merchandisers assigned to the account managers?
A. Without a schedule in front of me, I cannot give you specifies or accurate information.
Q. Okay. How do -- you testified you are the -- the immediate supervisor for merchandisers; is that correct?
A. Yes.
Q. What does that mean that you are an immediate supervisor?
A. It means that any issues regarding scheduling or attendance is brought to me and any requests for

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days off.
Q. Anything else?
A. I follow up on merchandising work and attendance.
Q. Anything else?
A. I see the day-to-day activities that merchandisers do.
Q. Anything else?
A. There's a lot more to it, I just can't -- I can't remember everything.
Q. You cannot remember everything that you do as the immediate supervisor for merchandisers?
A. If you give me a specific, I can answer.
Q. Okay. What else do you do? What else are your responsibilities with regards to your duties as the immediate supervisor of merchandisers?
A. Everything. Everything that has to do with merchandisers I'm directly or indirectly involved.
Q. How are you indirectly involved?
A. When I say indirectly, I gather facts and put them in front of HR if we have disciplinary issues. That's indirect.
Q. How do you indirectly get involved?
A. Gather facts.

Q. How do you gather facts?

* * *

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for Arturo Lopez, and second page of this performance review numbered 178, that's your signature; is that right?
A. On the bottom, yes.
Q. Yes.
A. Uh-huh.
Q. Okay. So you were signing this as the reviewer. What is -- what is reviewer? What is the role of the reviewer?
A. The reviewer essentially goes over their performance review and explains his marks.
Q. Okay, So do you actually do the review?
A. Yes.
Q. Okay. Okay. So this was Mr. Lopez' performance review for what period of time? According to -- to this, October 1, 2002, to October 1, 2001?
A. Yes.
Q. Is that right?
A. Yes.
Q. Would you look at the section at the -- I'm sorry, I can't read this. This heading under the heading attendance, it's about one, two, three -- five down of the -- of the different headings listed. Do you see that?
A. Yes.

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Q. Okay. Attendance, adheres to established hours and schedules, and according to this, Mr. Lopez -- or you gave Mr. Lopez a two. Do you see that?
A Yes.

Q. And a two means what?
A. He needs improvement.
Q. Okay. So what, what was happening with regards to his attendance at the time or during that time period that caused you to rate him as a two?
A. I don't remember.
Q. Okay. The next one, dependability, timeliness in meetings, adherence to policies and procedures, and carrying out assignments as expected, and he also got rated with a two. Do you know what caused you to rate him with a two with regard to the dependability?
A. I don't remember.
Q. Okay. Okay. And then there is some comments, employee, on the second page, number 180, employee's performance areas that require improvement. Do you see that section?
A. Yes.
Q. Okay. The third sentence, "Arturo needs to adhere to established hours and schedules, be at work on time and ready to work." What was that about?

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A. I don't remember.
Q. Okay. October 2, the next document, 181, dated October 2, that's a disciplinary notice or a DSN as we refer to them. Is that your signature in the supervisor signature line?
A. Yes, it is.
Q. And it s dated or at least it indicates you signed this on 10-8-01.
A. Yes.
Q. What was this about, this particular DSN?
A. It looks like he did not call or show up to work on October 1, 2001.

Q. Okay. So on the date that his performance evaluation was done -- well, at least the time that review time period expired on 10-1-01 on his performance review on that day he did not show up for work or call his supervisor; is that right?

MR. PRESNELL: Objection.

MS. MOLINA: I will clarify.

MR. PRESNELL: Are you saying his performance review was signed, given to him October 1?

MS. MOLINA: No. I'm going to clarify that.

Q. The review period for his performance, the performance review on document 179 went from 10-1-00 to

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10-10-01; is that correct?

A. Yes.

Q. On 10-1-01, the last day of the review time period --

A. Yes.

Q. -- he didn't show up for work or call a supervisor.

A. Yes.

Q. And who -- I'm in the details of violation -- well before we go there, do you have a recollection of -- of the circumstances of Mr. Lopez not showing up to work or calling a supervisor as shown on this details of violation section?

A. No. I do not have a recollection.

Q. Who was the supervisor he was supposed to be calling, if you remember?

A. I don't remember.

Q. Do you have any recollection of who told you that Mr. Lopez, or how you came to find out that he did not show up for work?

A. I just know he did not show up to work, but I don't remember how.

Q. Okay. Okay. The next sentence indicates, quote, "You are being given a copy of a no call no show policy to remind you of this policy." Okay. Who gave

* * *

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A. Yes.
Q. And you presented to her the facts in what fashion, what manner?
A. It was in a written form.
Q. But not this written form?
A. It could have been.
Q. Then how did Group C, failure to carry out normal assigned duties end up as the first statement?
A. I could have -- I may have typed that in.
Q. Did you type that in before your conversation with her?
A. No. That's after.
Q. After she --
A. After she makes a decision on the facts.
Q. How did she make the decision on the facts before without having the DSN in front of her?
A. She did have the DSN in front of her.
Q. Another DSN?
A. I don't know if this is the actual DSN that she had in front of her.
Q. There's a possibility there is another DSN out there that you presented to her that contained just the facts, "On Friday" -- from the sentence starting with, "On Friday" and ending "to work the load," you don't know if there's another DSN that contains those

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facts.

MR: PRESNELL: Object to the form of the question.

A. I don't know. I don't know if there is or not.

Q. Okay. Let's go to the next DSN. This one is dated April 2, 2001. The one we were looking at, the one dated April -- I'm sorry, it's May 9, 2001, that's the one we just looked at. All right. So we're --

A. What are looking at?

Q. We are now looking at the one dated May 2, 2001. Okay. Number 182 of Exhibit H, this one is on Arturo Lopez. Is it -- was there more than one merchandiser under your immediate supervision named Arturo Lopez?

A. No.

Q. So this is one individual?

A. Yes

Q. And this is -- Mr. Lopez is Hispanic; is that correct?

A. Yes.

Q. This one is, this one is -- the detail of this violation identifies the first line as Group C, failure to carry out the normal assigned duties. Do you see that?

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A. Yes.

Q. Okay. And the facts, that's using your terminology, sir, begins with, "On Monday 4-30, you called Jeff Katt to notify him you would need to take some time off from work to sign paperwork for a new home. Jeff agreed to let you off with the understanding you would be back to finish your assigned stores when done. You never reported to work or bothered to call." Do you see that?

A. Yes.

Q. And this was -- you identified this as -- sorry. This was identified -- these two sentences of facts were considered a Group C violation; is that correct?
A. Yes.
Q. Okay. Do you know who determined that these facts were a Group C violation?
A. Sherry Pederson.
Q. Okay. At what point did she determine that this was a Group C violation?
A. When she reviewed the facts.
Q. And she reviewed the facts, how did the facts come to her?
A. In the -- they were given -- I gave her the facts. She decides what it was going to be, so we

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typed it up as a Group C.
Q. Okay. How did you give her the facts?
A. I don't remember.
Q. In what form?
A. I do not remember.
Q. Do you have a recollection of whether it was the form, a copy of the form in front of you on Page 182?
A. It could have been.
Q. It could have been?
A. Yes.
Q. Okay. So you presented the facts to her on the form, on written form; is that correct?
A. Yes.
Q. Okay. And then based on your presentation of these facts to her, you're saying then she determined it was a Group C violation?
A. Yes.
Q. Okay. How did the Group C violation end up on the first

line of the details of violation before the facts?
A. I may have typed it.
Q. But do have you an explanation of why it ended up as the first sentence in the -- in the events as you have described that after you presented the

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facts to her? Do you have --
A. That is correct.
Q. Do you have any explanation for that?
A. She determined it was a Group C and -- and then we put Group C, failure to carry out normal assigned duties. That was after she reviewed the facts.
Q. And the facts were presented to her on the DSN?
A. They could have been, yes.
Q. Looking at these facts just as you call them facts, and I'm using that term as you use the term, starting with, "On Monday 4-30" going through when done -- actually, going through including the sentence that says, "You never reported to work or bothered to call. Jeff paged you several times with no answer," do you see that?
A. Yes.
Q. Do you know -- could this -- could the incident described in the facts here in this detail of violation, could that have been written up as insubordination?
A. Okay. Ask me that question again.
Q. Okay. Look at the facts, okay? I'm looking at the details of violation on Page 182.
A. Yes.

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Q. Okay. Look at all the facts, starting with -- starting with, "On Monday 4-30" and going through "Jeff paged you

several times with no answer," do you see that?
A. Yes.
Q. Could those -- could that incident or incidents have been written up as an insubordination?
A. Could have been.
Q. Why wasn't it?
A. Because I --
Q. But why?
A. I don't know.
Q. Who would know?
A. Sherry Pederson.
Q. Okay. Then do you agree that that incident could have been written up as insubordination?
MR. PRESNELL: Objection.
A. It could have been.
Q. Okay.
MR. PRESNELL: Doing all right?
THE WITNESS: (Nodding.)
Q. Okay. Let's go to what will be marked as exhibit number or Exhibit Letter I.
(Exhibit I marked for identification.)
Q. Here's Exhibit I, and I want to ask you to

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go -- to leaf through the exhibit with me to make sure we both have the same pages. Okay? Page 495, 496, 497, 433, 434, 435, do you have all of those pages?
A. Yes, I do.
Q. Okay. Okay. You, you worked with Brian Esquibel at Coca-Cola; is that correct?
A. Yes, I did.
Q. Okay. His employment with Coca-Cola terminated; is that correct?
A. According to this document, yes.

Q. Do you have any personal knowledge with regard to his termination from Coca-Cola?
A. No, I do not.
Q. What position did he hold, if you know, when his employment terminated?
A. He was a side load driver.
Q. Side load driver?
A. Yeah.
Q. What is that?
A. That is a delivery driver that drives a truck.
Q. Was he -- did he work under your supervision?
A. When?
Q. When he worked as a side load driver?
A. No.

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Q. Okay. Did he ever work under your supervision?
A. Yes, I think he did.
Q. What position did he hold when he worked under your supervision?
A. He was a merchandiser.
Q. Who was his supervisor, if you know, at termination?
A. That was Rick Gallegos.
Q. Does Rick Gallegos, is he still working for Coca-Cola?
A. Yes.
Q. What position does he hold?
A. He's a distribution supervisor.
Q. Do you have any information concerning Mr. Esquibel's termination from Coca-Cola?
A. No.
Q. All right. Nobody, nobody has talked to you concerning his termination?
A. No.
Q. Okay. We can put that one aside. Exhibit J.

(Exhibit J marked for identification.)

Q. I have handed to you several pages marked Exhibit J, and we are going to do the same thing with this exhibit. We are going to go through the pages,

* * *

EXHIBIT U

EXCERPTS OF DEPOSITION OF JEFF KATT

[p.22]

required to check in with Mr. Grado at the beginning of the workday?
A. I don't know if they did. Sometimes, but I know for most times it was just me because I would -- if somebody wouldn't check in, I would have to call Cesar several times and let him know that somebody wasn't there. And he would, you know, hear that for the first time, and then he would have to juggle some things around to help make sure that everything got done.
Q. Okay. So if somebody wasn't -- wasn't doing their -- wasn't checking in with you or not responding to your pages, then you would go to Mr. Grado --
A. Correct.
Q. -- as your supervisor?
A. Correct.
Q. How about merchandisers calling in sick? Who were they to contact if they were calling in sick?
A. From my own experience, they always called me. And as far as who else they would call, I'm not 100 percent aware of anything else. But I know from my experience I was called by Arturo or other people directly who was my merchandiser.

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Q. Arturo Lopez?
A. Correct.
Q. So you received calls from Arturo Lopez -- calls or pages? I'm sorry.

A. Sometimes he would communicate through a page, and I would call him at that number. And other times he would call my cell.
Q. Okay. So during your employment with Coca-Cola, you received calls from Arturo Lopez telling you that he was not reporting to work because he was sick?
A. Correct.
Q. And then what would you do with that information?
A. I would call Cesar and let him know.
Q. For what purpose?
A. So that we could possibly pull another merchandiser or something on somebody else's route or something, and he would make that decision.
Q. During your entire employment with Coca-Cola, were yon ever told that merchandisers were not supposed to call you if they were going to call in sick?
A. Not that I can remember.
Q. How many times -- do you have a

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recollection of how many times Mr. Lopez called into let you know that he was not reporting to work because of illness?
A. I don't know the exact number, but I would say at least three.
Q. How about other people? You said Arturo Lopez and other people.
A. Damien Mirabal.
Q. Mirabal?
A. That might be it.
Q. M-I-R-A-B-A-L?
A. That's it.
Q. Okay. Who else?

A. I'm trying to think of all my merchandisers. I believe Vince Martinez called me. I know Stephen called me one time.
Q. Stephen Peters?
A. Stephen Peters. And I would probably have to look at my merchandiser list to be able to remember the rest. I'm not too clear.
Q. And when Damien Mirabal, Vince Martinez, Stephen Peters called you to report sickness or illness and inability to work, what did you do with the information?
A. I would call Cesar.

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Q. So there wasn't anything out of the unusual -- out of the usual with these people calling up and saying, "I'm going to be out sick," with what you would do with the information?
A. The only, I guess, discrepancy that I know was when Steve would call me on that Saturday, I believe it was, to let me know that he wasn't feeling good. And I believe I let Cesar know like the next day or maybe it was Monday, I can't specifically remember, that he had called me. And with the other ones, they were typically during my work time, so I was out and about in the field and I would call Cesar at that time.
Q. So why did you not call Mr. Grado until -- or let him know until Sunday evening or Monday morning with regards to Mr. Peters calling in sick?
A. I believe I did page him once or twice, and I never got a response back, which wasn't uncommon on the weekends. Towards the evening, but I believe it was Monday or something is when I finally got a hold of him. I'm not exactly sure when I spoke to him. It might have been Sunday night. And it was just for convenience sake, really.
Q. What do you mean?

A. I mean just -- it was getting probably

* * *

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A. They were going to page in to me.
Q. Page in to you. And then what would you have done with that information, if anything?
A. I would have just made sure they were all there and let them work.
Q. Okay. And then with the revised schedule, was anybody supposed to check in with you?
A. As far as I can remember, no, because I think it was just us three. I can't remember specifically how we re-routed that specific day. So for example, Cesar would not have paged in to me, and I don't believe Ray would have paged in to me. I can't specifically remember, but we would typically talk to make sure we were all out there.
Q. And so you knew that Mr. Grado was out there?
A. Yeah.
Q. As was Mr. Lucero?
A. I don't believe he was out there at that time.
Q. At that time, meaning on Sunday?
A. Correct
Q. And you don't know why?
A. We would just -- I would communicate with Cesar, I mean, and we would call each other to make

[p.63]

sure we were doing specific stores. And I can't specifically remember what happened that weekend with Ray.
Q. So you don't have any recollection of seeing Ray at work at any of the stores on Sunday the 30th?

A. Not that I can remember.
Q. And you don't have any recollection of talking to Ray on the phone, Sunday, the 30th, during the workday?
A. Not that I remember.
Q. And do you have any recollection of Cesar Grado saying anything about Mr. Lucero working that Sunday?
A. That he was working that Sunday?
Q. Yes.
A. No, other than the - I can't specifically remember. I would have to say no, I can't specifically remember.
Q. But you do have a recollection of communicating with Mr. Grado on that Sunday?
A. Yes.
Q. And you were aware that he was covering some of the stores?
A. Yeah.

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Q. Okay. That had originally been in Damien Mirabal's route; is that correct?
A. That's correct.
Q. When you spoke with Mr. Peters on Saturday evening, did you -- did you say anything to him with regards to the route already being covered for Sunday?
A. I don't remember specifically if we had that conversation. If I did, it would have been a casual, "The route is covered. Call me if you can make it," type thing. It wouldn't have been anything I specifically remember.
Q. During that weekend, did Mr. -- Saturday or Sunday, did Mr. Grado ever say to you that Mr. Peters' employment had been terminated?
A. I can't remember if it was Sunday or Monday night is when he told me. I believe it was Monday night that he told me that Steve was going to be terminated. And if I just know

the date Steve was let go, that's -- it was the night before, whether that would be Sunday or Monday.
Q. So if Stephen was terminated on October 2nd, it would have been October the 1st?
A. That's right.
Q. And how was it that -- how is it that

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Mr. Grado gave you that information about Mr. Peters' employment?
A. It was over the cell phone at night.
Q. Were you working?
A. No, I was home.
Q. Did he call you for that purpose, to let you know about Mr. Peters' employment?
A. I believe we were talking initially about scheduling, what was going to happen that week or that next day, and that's when it came up.
Q. What did he say?
A. I believe I asked, "Well' which route is Steve going to cover?" Or, "Why are we covering route 1," or something like that. And he said, "I think I'm going to terminate him or 86 him," or whatever. What phrase he used, I forget.
Q. "I think I'm going to terminate him or 86 him"?
A. He used the word -- the term 86 from time to time, but I can't remember what he said specifically. It was one or the other.
Q. Do you know what the term 86 means?
A. That means he was going to fire somebody.
Q. Do you know where that number comes from?
A. I have no idea.

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Q. Okay. And he said this to you on Monday night?
A. Yes.
Q. Okay. And what did you say, if anything, when he said that to you?
A. I said, "Why are you going to do that?" And I can't specifically remember what he told me. And I said, "You do know he called in, he called in sick to me?" And I said, "I tried to page you." And he kind of paused. He said, "Why didn't you tell me that earlier?" And I said, "I did. I tried to page you."
Q. And then?
A. And that was the end of the conversation pretty much. I think I had said something like -- I can't remember specifically. That was pretty much the end of the conversation at that point.
Q. So be asked you, "Why didn't you tell me that earlier?" and you told him, "I did. I tried to page you"?
A. Um-hum.
Q. Had you told him earlier that Mr. Peters had called in sick, earlier than this conversation with you on Monday?
A. No.

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Q. You had not told him?
A. No.
Q. You hadn't discussed Mr. Peters during the workday, Sunday, September 30th?
A. No. No, I did not.
Q. Did Mr. Grado know that Mr. Peters had not reported to work on Sunday, the 30th?
A. No, he did not.
Q. Did he ask you whether he had?

A. No.
Q. Did he even mention Mr. Peters Sunday, September 30th?
A. No, not to my recollection.
Q. Did you have any other conversations with Mr. Grado after that conversation with him on Sunday -- was it Sunday night or Sunday evening?

MR. PRESNELL: Object to the form. Which conversation?

Q. (By Ms. Molina) The Monday evening or night conversation, was it evening or night?
A. It was after work. I think I said it was around 6:00 or something on Monday. It was that conversation.
Q. Monday, October 1st, 2001, around 6:00 p.m.?

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A. That's right.
Q. After that conversation Monday at around 6:00 p.m., did you have any other conversations with Mr. Grado concerning Mr. Peters' employment?
A. Yeas. He called me that day, Tuesday, and I can't remember specifically what time. It might have been 8:00 or 10:00, and said -- I believe he said -- he asked, "Where's Steve?" And I said he's at whatever store he was at at the time. And he said, "Call him and tell him to go down to the plant," I believe it was.
Q. Anything else?
A. No, that was it.
Q. When you say 8:00 or 10:00, a.m. or p.m.?
A. A.m.
Q. And did you call Mr. Peters?
A. Yeah.
Q. Did Mr. Grado -- did you have -- did Mr. Grado tell you what he wanted to see Mr. Peters about?
A. No. I don't think he did, no.

Q. Did you ask?
A. No.
Q. Okay. So did you -- and you called Mr. Peters?

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A. I believe I did.
Q. Okay.
A. Yeah, I think I did.
Q. Any other conversations with Mr. Grado after that conversation --
A. No.
Q. -- with regards to Mr. Peters' employment?
A. No.
Q. Okay. Did you have any -- do you know whether Mr. Peters went to the plant?
A. Yes.
Q. Okay.
A. Are you asking me how do I know he went to the plant?
Q. Yes.
A. It was either Cesar had asked me to tell him to go down there or -- I forget if Steve called me and told me he was going down there, but I knew he was going down there for the purpose that I could take care of the store in the meantime.
Q. Oh, so Steve communicated with you to ensure coverage for the store he was at in his absence while he was at the plant, is what you're saying?
A. Right.

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Q. And did you provide coverage for the store he had been at?
A. I'm sorry?

Q. Did you provide coverage for the store Mr. Peters had been at?
A. Yes.
Q. Okay. Did Mr. Grado ever tell you that Sherry Pederson had terminated Mr. Peters' employment?
A. No.
Q. Have you ever heard of a woman named Patricia Edgar?
A. Just recently.
Q. And you heard about her -- was this through counsel?
A. Yesterday.
Q. Okay. Prior to yesterday, had you heard about -- had you heard of a woman named Patricia Edgar?
A. No.
Q. Did Mr. Grado tell you that Ms. Edgar had terminated Mr. Peters' employment?
A. No.
Q. Based on your conversations with Mr. Peters' was it your -- with Mr. Grado, was it

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your understanding that it was Mr. Grado who had fired Mr. Peters?

MR. PRESNELL: Object to the form.

A. That was my understanding.
Q. (By Ms. Molina) Did anybody ever tell you otherwise, that it was not Mr. Grado who had terminated Mr. Peters' employment, anybody with Coca-Cola?
A. With that -- no, not with that specific case, no. The only thing I knew, at some point -- I can't remember when I learned the information -- was that Cesar went off to talk with Sherry about the situation, not necessarily Steve, whether it would be grounds for dismissal, that sort of thing.
Q. So just generally, you knew -- you had knowledge that Mr. Grado would often talk to Ms. Pederson concerning any

particular situation and whether a particular situation was grounds for termination?
A. Right.
Q. Do you know if Mr. Grado ever fired an employee?
A. I always assumed that he was the one firing when I worked there.
Q. So during the time that you worked there,

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you were -- you were aware that he had fired employees under his management?
MR. PRESNELL: Object to the form.
A. I assumed that that's what was taking place.
Q. (By Ms. Molina) Why did you assume that?
A. Because like I had mentioned earlier, like he would say, "I'm going to 86 this guy because he's not doing his job."
Q. Is your understanding about -- are you -- you're saying that he assumed --
A. He would interchange like 86, fire, you know what I mean, as far as the words he used.
Q. After Mr. Peters was terminated or fired from his job, did you have any other conversations with Cesar Grado where Mr. Peters' name came up or where Mr. Peters was discussed?
A. With Cesar?
Q. Yes.
A. If they were, they were probably just real vague. I can't remember specifics.
Q. What do you mean, they were vague?
A. I mean just like -- you know, I can't remember specifically. It would be like him explaining to me that he's no longer here or

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something like that.
Q. He, Mr. Peters?
A. Exactly, yeah.
Q Did you ask-- did you ever ask Mr. Grado why Mr. Peters wasn't there anymore?
A. Boy, I can't recall right now. I can't remember if I -- I can't recall right now.
Q. Okay. And so these -- so these vague conversations with Mr. Grado concerning Mr. Peters after Mr. Peters was fired, Mr. Grado would try to explain to you why he wasn't -- why Mr. Peters wasn't there anymore?
MR. PRESNELL: Object to the form.
Q. (By Ms. Molina) And again, I don't want to put words in your mouth. What do you recall about these vague conversations concerning Mr. Peters?
A. I cant remember.
Q. Is there anything that would help you remember?
A. Just probably maybe thinking about it for a little bit. You know what I mean? I mean it was a while ago, and I can't remember specifically. I know after the -- after they fired him, Steve had given me a call and informed me that he was no longer working, with Coke, and so there was never

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really a mystery with me. I don't think he went into great detail or anything.
Q. He' being Cesar?
A. Cesar, about those conversations.
Q. I'm not following you.
A. As far as like me and how I came to the knowledge that he was fired, Steve told me.
Q. Okay.

A. So it's not like I had to ask Cesar a lot of questions. "Is he here? Why did he get fired?" That kind of thing, I just kind of let it go.
Q. But after Mr. Peters was fired, did you have any other conversations with Mr. Grado concerning Mr. Peters?
A. No. No.
Q. -- What kind of a worker was Mr. Peters?
A. He was an excellent worker.
Q. Did you ever have problems with him showing up for work or --
A. No.
Q. -- performing his duties?
A. No.
Q. What kind of a supervisor was Mr. Grado?
A. He was -- I mean he was a take-charge kind of a manager. And he was on top of a lot of things,

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and he pushed it pretty hard.
Q. Pushed employees pretty hard?
A. Um-hum.
Q. Is that a yes?
A. Yes. I'm sorry.
Q. Was there anything about Mr. Grado's conduct as a manager that you ever found to not be appropriate?
MR. PRESNELL: Object to the form.
A. I'd say no.
Q. (By Ms. Molina) Did you ever hear -- were you working at Coca-Cola around April of 2002?
A. Yes.
Q. Did you ever hear about Mr. Grado engaging in any inappropriate behavior in October of 2001 and on February 2002?
A. Did I ever hear of him --

Q. Him engaging in any type of inappropriate behavior?
A. No.
Q. Would you turn to page -- Exhibit G, please, and turn to the page marked EEOC 1-BCI-00195? This is a document entitled Disciplinary Status Notice, dated May 9th 2001, for employee, Arturo Lopez. Would you read the synopsis

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of this notice and tell me if you are the Jeff that's mentioned in this notice, please?
A. Where it starts out, "Failure to carry out?"
Q. Yes, sir.
A. "Failure to carry out normal assigned duties. On Friday, Smith's in Edgewood received a load of product. Jeff asked you to work the load on two separate occasions, on Monday and Tuesday, after it sat in the back room all weekend. You did not follow instructions to work the load. This performance is not acceptable, and immediate and consistent improvement must be shown or further disciplinary action will be taken up to and including termination."
Q. Is that you?
A. Yes.
Q. So in May 2001 -- do you have a recollection of this particular incident with Mr. Lopez?
A. Yes.
Q. What happened?
A. On this incident, there was a delivery of a number of pallets. And a merchandiser's normal duty is to take care of all those pallets and put

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them out onto the floor. And on this occasion, there was a pallet or two, I can't specifically remember, that was still

wrapped up in the shrink wrap. And I asked him to come back and work it, and he didn't do it. And I asked him again, and he told me he would, and he didn't do it.

Q. And you provided this information to -- to--

A. Cesar.

Q. Okay. And Mr. Lopez was -- what happened? This was a warning; is that correct?

A. Yes.

Q. He received a verbal warning for this?

A. That's right.

Q. So you had instructed him to do a certain assignment; is that correct?

A. That's correct.

Q. Did you ever find out why he didn't do it?

A. Just from asking him, he just said -- he just kind of avoided -- you know, kind of gave me some vague answers like, "Oh' I meant to," or "I was running short on time." I can't remember specifically.

Q. What was the first part of your answer? He was running short of time, and what other answers

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Q. Okay. And Ms. Pederson would also work in doing administrative things?

A. Yeah.

Q. What do you mean by that?

A. Like if there was correspondence or something, I know that she would hand them information. I don't know specifics, what it was.

Q. Correspondence-

A. Like I could see like a notebook or something like that. I just remember her giving information, that kind of stuff. I don't know what specific stuff, what she did, what she gave.

Q. Okay. -- Do you know who she reported to?
A. I don't.
Q. And informing managers, she would also -- or giving information to managers, what do you mean by that?
A. -- I believe she would work in like -- I remember we had like a sexual harassment course one time, I think it was, and she was kind of leading that.
Q. As an instructor?
A. I think she was more the facilitator.
Q. Okay. Would you look at the -- would you turn the page and look at EEOC 1-BCI-00182?

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A. Um-hum.
Q. Okay. That's another Disciplinary Status Notice on Mr. Lopez; is that correct?
A. Yes.
Q. Okay. And according to this one, April 30th, Mr. Lopez called you -- is that correct?
A. Yes.
Q. -- to let you know that he would need some time off from work to sign some paperwork for a new home?
A. Correct.
Q. Is that correct? And you agreed to let him off with the understanding that he would be back to finish his assigned stores; is that correct?
A. That's correct.
Q. And he never showed up?
A. Correct.
Q. He never returned to work?
A. That's right
Q. And he never -- you paged him several times; is that right?
A. That's right.

Q. Okay. Did you ever find out what happened with Mr. Lopez on that occasion?
A. I can't specifically remember what he --

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what his excuse was. I'm sure we talked. We talked every day, every morning, so I can't specifically remember.
Q. Would you look at the next page, please, page 181, another Disciplinary Statutes Notice for Mr. Lopez, October 2nd, 2001?
A. Okay.
Q. Okay. Are you the supervisor -- were you Mr. Lopez's supervisor at the time this DSN was prepared?
A. Yes.
Q. So on Monday, October 1st, Mr. Lopez didn't show up for work or call a supervisor or call you; is that correct?
A. That's correct.
Q. Okay. Do you know why he didn't call or show up for work?
A. I don't remember. I can't -- I don't know.
Q. And for this, he received another warning; is that correct?
A. That's correct.
Q. He, being Mr. Lopez?
A. Yes.
Q. Okay. Would you turn to page 167 of that

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same exhibit? I'm sorry.
A. Okay.
Q. So according to this document, Mr. Lopez was finally being terminated November 26th for no call no show; is that correct?
A. It looks like it, yeah.

Q. Do you have any information about what led to his termination in November of 2001?
A. I can't specifically remember. I know there was a series of events that happened, but I can't remember what exactly he was terminated for. I don't know.
Q. When you say series of events with regards to Mr. Lopez, what do you mean?
A. His last time at Coca-Cola, during that last period is when -- boy, it's kind of a long story. It's where he was working in Edgewood, and I know at that point he got into a car accident. And I believe he took some time off because he was injured. He couldn't work at the time. And I don't know exactly what reason he was terminated for. If that was your original question, I don't know. I thought there could have been a couple of reasons. I don't know.
Q. Did you ever know what the reasons were

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I do not know about specific dates. I do not know about Owen Kelly.

And the question was, "How often did the violation of the attendance policy occur by these employees or any other employee?"

And you said, "I believe a handful of times."
A. That's correct.
Q. Okay. What do you know about -- let's go back to Mr. Lopez, since you were asked about him in your affidavit. Other than what we've already gone over with regards to the Disciplinary Status Notices that I showed you with regard to Mr. Lopez, are you aware of any other times that Mr. Lopez violated the attendance policy?

A. I know just one violation that I know that would probably be in conjunction is when he refused to report in to me after I paged him several times.
Q. Okay. So you had paged him several times on one occasion, and he never called you; is that correct?
A. Correct.
Q. How many times would you say that you paged him?
A. Probably six.

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Q. In one day?
A. Probably within a couple of hours.
Q. Okay. And do you recall why you were paging him?
A. Because it was a weekend and my merchandisers would page in to me in the morning at 5:00 am. And if I didn't see their number come up, I knew they weren't at work. So at 5:30 I would start getting nervous and calling; because if they didn't show up, that means I had to either go out there or to reassign people to get the work done.
Q. So after you attempted to or you paged him around six times within a couple of hours, what did you do then?
A. I called my merchandiser, Russell, who was at another store.
Q. For what purpose?
A. To pull up that store that Art was supposed to have started at.
Q. Okay.
A. And I told him or asked him to go over there and get started on it. And I was about to go out there and help him, I believe, and he paged me back and said, "Art's there," that Art's mad. And I don't remember specifically that he was upset, and I

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paged him five or six times, and he wasn't going to return my call.
Q. So the information you got was that Art was upset because you had paged him?
A. Yeah. It sounded foolish to me. He should have just simply responded back, but he was just mad that day for whatever reason and decided not to page in with me.
Q. Did you tell Grado about this incident?
A. Yes, I did.
Q. Did you tell him about the incident the day it happened?
A. Yes.
Q. What did you tell Grado about it?
A. I paged Cesar. We talked on the phone. And I let him know what the situation was, that he didn't page in in the morning with me, so I assumed he wasn't out there. I told him, "I sent Russell over there to get started, and he told me he was already there, doing his job, but he was upset for some reason. He's not talking to me." And I think he said he was tired of this shit, is what he said.
Q. Who said?
A. Art said that. That's what Russell told me Art said.

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Q. Russell told you that Art said that?
A. Yes.
Q. Okay.
A. And that's when I told Cesar, at that point.
Q. Okay. And do you know if Cesar did anything with regards to the information you gave him?
A. Yeah. I know he said, "Here, let me page him," and he paged him a couple of times. And then he said, "Okay, watch

this." I don't know where he was, but he was typing into his pager.

Q. Who was typing, Cesar?

A. Cesar. He was building him a text message. I don't know where he was doing it from, whether from his office or house. And he read off to me what he was communicating with Art. He said, "Art, you need to call me ASAP, and refusing to do so is insubordination, which can lead to termination." Then he typed in his phone number.

Q. And he was telling you this as he was doing it?

A. Yes.

Q. Okay. And do you know if Art responded to that page?

* * *

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A. Yes.

Q. Who was there?

A. There was one person with the investigator. I don't remember his name.

Q. Okay. Any EEOC employee?

A. Yes.

Q. Was there anybody from Coca-Cola with you?

A. Sherry Pederson, I believe, was there.

Q. Okay. And at the time that you gave this statement, were you still an employee at Coca-Cola?

A. Yes, I was.

Q. June of 2002? Okay. So when you say, "Yes, he did refuse to work," you're saying that -- you were meaning to say that he couldn't work?

MR. PRESNELL: Object to the form.

Q. (By Ms. Molina) Is that what you're saying?

A. I would -- What I understood the question, "Did he refuse to work his days off?" I was referring to an incident or to the

time we're talking about just with the conversation that was taking place. I didn't, I guess, really define the word refuse as opposed to Coca-Cola's or Stephen's definition or any of that. I just knew there was a time that he did not work because he said he could not work.

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Q. Okay. So how would you define refuse in this response to this question?
A. I would define it as, "Was there a time we asked you to work and you said no?"
Q. And you responded yes to that?
A. (Witness nods head.)
Q. That's a yes?
A. Correct, yes.
Q. And that's the incident starting with September 28th, 2001; is that correct?
A. That's correct.
Q. Okay. You were also asked in this by the EEOC investigator on page 3, number 17, the question was: "Have any of the merchandisers under your supervision ever committed the offense of being insubordinate?" And your response was "Insubordinate as far as not coming to work. I am not sure if they were terminated or quit." And you went on to identify Arturo Lopez and Damien Mirabal. Do you see that?
A. Yes.
Q. And the names appear on the following page?
A. Yes.
Q. Okay. Why did you give -- why did you

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identify Arturo Lopez and Damien Mirabal as being insubordinate as far as not coming to work?
A. Because I always assumed when a schedule was made, that was a direction or an order that you were supposed to work that time.
Q. Where did you get that understanding from?
A. From the schedule that was handed out each week.
Q. So you understood that if you were on the schedule, that that was an order to merchandisers to be at work?
A. Yes.
Q. And again, where did you get that understanding from?
A. At the time I just assumed if you're supposed to work, you should show up. I mean I thought that that would be disobeying somebody if you refused to work.
Q. Okay. And you considered that if somebody disobeyed that order, the work schedule, that that would be insubordination?
A. Yeah, at the time, I did.
Q. Has your -- have you changed your opinion about that at this time?
A. I know what the definition of

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insubordinate is now.
Q. How do you know that?
A. From yesterday's conversation.
Q. From yesterday's conversation with your counsel?
A. That's correct.
Q. With counsel? At the time -- at the time you felt-- at the time that you gave the EEOC this statement, you identified Arturo Lopez and Damien Mirabal as committing the act of insubordination by not reporting to work; is that correct?

A. Correct.
Q. What is your understanding of insubordination?
A. Now I understand it to be if, at Coca-Cola, if they tell you that phrase, that this is a cause for insubordination or this is a failure to do something, this is an order, and failure to do something is insubordination and can lead to your termination.
Q. Okay. So insubordination -- today your understanding of insubordination is if Coca-Cola tells you that phrase, and the phrase being failure to do something is insubordination, then it's insubordination?

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A. Correct.
Q. Anything else?
A. No, that's it.
Q. So what your understanding is today about insubordination and what your understanding was at the time that you gave the EEOC this affidavit, would you say that Arturo Lopez committed the act of insubordination?
A. Now I would say he did not because there's no phrase, I guess, on that schedule that says failure to comply with this is being insubordinate, which can lead to your termination.
Q. How about Damien Mirabal?
A. Same thing.
Q. So what is your -- what is your understanding of why Mr. Peters was fired from his job? Strike that.

At the time, that his - that he was fired from his job, what did you understand to be the reason for his employment to be terminated?
A. Because he refused to work at that time, that day off.
Q. Because he refused to work his day off?
A. That's what my understanding was, Cesar's angle of doing it, you know, like -- because Cesar

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had asked him. And for whatever reason, you know, he couldn't do it, and then that's the reason -- that's the reason why, I would say.
Q. That was your understanding at the time of Mr. Peters' termination as to why he was fired?
A. That's my understanding. That's what I thought.
Q. And at the time that you thought that that it was because he refused to work a day off, what were you defining refused as?
A. At the time it was because he had plans -- I mean and just not doing it, not dropping your plans and doing it.
Q. And today what is your understanding of why Mr. Peters was terminated?
A. Today my understanding is he was terminated because Cesar told him that phrase. And just that he couldn't -- that he didn't come in. He refused to do it, I guess, and that was it.
Q. Do you believe that Mr. Peters was insubordinate?
A. In my opinion at the time, I did not think so, no.
Q. Why?
A. Because at the time, Steve had worked a

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Saturday or two before that, an extra day, and I felt it was being a little bit unfair to be pushed that hard, for people to keep working six days, and it was a very tough job to do. And it was understandable that somebody would need two days off.
Q. Okay. You mentioned earlier, when I had asked you about Ms. Pederson and her responsibilities and duties as you understood them, you said she had to some extent been involved in training on sexual harassment; is that correct?
A. Yes.

Q. So as an employee at BCI, you received training on sexual harassment; is that correct?
A. That's correct.
Q. Did you receive any other kind of training dealing with employment discrimination?
A. Not that I can remember off the top of my head, no.
Q. Did you ever receive any training on employment discrimination based on a person's race?
A. If I did, it was probably in that video that they showed us. I can't specifically remember -- I'd have to say I don't know for sure.
Q. Do you have an understanding, Mr. Katt, of

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what race discrimination in employment is?
A. I think I have a pretty vague understanding.
Q. Okay. What is your understanding?
A. That if you make a decision to affect someone's employment or their status based upon their race and not on the facts, that that would be racial discrimination.
Q. Have you ever -- did you ever hear of anyone at BCI ever -- ever use any derogatory or make any derogatory remarks concerning a person's race?
A. I'd have to say no, not that I know of, 100 percent, no.
Q. What do you mean, not 100 percent?
A. I would just say -- I mean I worked in kind of a loose environment sometimes where -- I mean people talked a lot, and sometimes things just went in one ear and out the other and you didn't really pay attention to everything.
Q. What do you mean by a loose environment?
A. Like there would be people in my position and other positions that would just talk freely, I mean talk about anything, and nothing that I would ever remember that would be significant.

* * *

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A. There was a time that was pretty similar, where we were going to be short a merchandiser, and it was going to run into the same situation where I had to ask someone to work a sixth day. And Cesar had given me a call on the phone and said, "I need for you to have Monica work one of those two days off that she has. Tell her she can pick one of the days." So I called up Monica, and I said, "We need -- we're going to be short. I need for you to work one of those days." She was having a birthday that weekend, and she wanted both those days off pretty badly. And she told me which day it was that she wanted off. And I said okay. I called up another merchandiser to juggle some things, and she called me right back and said, "No, I want to switch it to the other day." And I said, "Okay," and that was pretty much it. Then I guess continuing on, she never showed up that weekend that she, said she was going to work that day, and I paged her several times to come in. And I informed Cesar that she didn't show up.

Q. Okay. And what did Cesar tell you, or did he ask you anything about Ms. Lovato and her not

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showing up for work?

A. No, he didn't really say anything specific. I mean, "Ask her why she didn't show up," or anything like that. I just told him I paged her several times and she never called me back, and I went and pulled out one or two of the stores that was assigned to her.

Q. Did Mr. Grado -- with regard to Ms. Lovato, did he ever say anything to you with regards to, "You can't force an employee to work a day off?"

A. That happened later that week, after that weekend. I got a call, I believe it was from Martin at first; and then I got the same conversation with Cesar. And they asked me that question, "Did you make her work one of her days off?" And I said, "I just did what you asked me to do." He said, "We needed her to work one of those two days." And I asked her to work one of those two days. And he said, "You can't make somebody work one of their days off."
Q. Who told you?
A. Cesar.
Q. So who asked you if you had made her work?
A. Martin Aranda.

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Q. Martin Aranda asked you --
A. Yeah.
Q. -- "Did you make her work?" And you said --
A. I said the same thing I told Cesar. I said, "You guys asked me to have her work one of those two days, so I called her up and said she had to work one of those two days."
Q. And then he said, "You can't make somebody work on their day off"?
A. Right.
Q. So do you know what happened to Ms. Lovato's employment?
A. I know that she ended up coming back to work after missing those days. And then I think she quit for a temporary period, I don't know specifically. And from what I understand, Don Bateluna talked her back into coming to work, and she did for maybe the rest of that week and then she quit again.
Q. Is Ms. Lovato African-American?
A. No.
Q. So she -- after she didn't show up for work that week,

then she returned back to work?
A. Yes.

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Q. She came back to her -- do you know whether her employment had been terminated during that week?
A. From my -- I don't know for sure.
Q. What is your understanding?
A. My understanding is that no, it wasn't terminated.
Q. Okay. And then she came back to work at Mr. Bateluna's request?
A. That's what I had heard, that he had a conversation with her and talked things out. And I remember he even mentioned something in a Friday meeting about like talking about merchandisers and that sort of thing.
Q. So it was -- it was brought up in a meeting on a Friday with merchandisers concerning her return to work?
A. No. I can't specifically remember how that conversation played out. I just remember that I heard something from Don, that he had talked to her. And I can't remember. There was one other person who told me about that, but I can't remember specifically.
Q. And do you know whether she did come back to work?

* * *

[p.62]

Q. That's what he told you direct evidence meant?
A. Right.
Q. The next sentence, "I have never heard of Mr. Grado or any other employee at Coca-Cola use racially derogatory remarks." Okay? Are you there?
A. Yes.
Q. Okay. You have never, according to this statement, you

have never heard of Grado making or using racially derogatory remarks, is that correct?
A. Right.

Q. And this is concerning Peters or any other African-American employee at Coca-Cola?
A. Correct.
Q. Had you ever heard Grado -- I know you've said, and this says, that you never heard of Grado making or using racially derogatory remarks. Had you ever, yourself, heard Grado make racially derogatory remarks?
A. I mean there was a time where -- and my memory is not 100 percent on this -- it may have

[p.63]

happened.
Q. Tell me about that.
A. It was in the morning, and it was after Steve had been fired. And I was driving to work or at some location, and I was on the phone with Cesar. And I forget the conversation, how it went. And my memory isn't 100 percent clear, but it was something to the effect of, "Did you hear Steve is trying to sue me," or sue Coca-Cola, I forget which one. And I said -- I didn't really say much. I was just trying to stay out of the whole thing. And then there was -- after that he may have used a racially derogatory remark, but I'm not 100 percent sure that he did.
Q. What remark is that?
A. That he would have called him an N word or a work like that would have been racially derogatory.
Q. What do you mean by the N word?
A. Nigger.
MR. MOODY: Or word like that, was that your testimony, Mr. Katt?

THE WITNESS: Correct. And like I said, I'm not 100 percent sure of that. I can't remember -- it was a rough day, and I had other

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things on my mind. And we had that conversation, and for some reason that sticks in my head. But I can't be 100 percent sure of exactly what was said.

Q. (By Ms. Molina) Did you share this information with anyone at Coca-Cola or counsel?

A. No.

Q. Did you ever tell Mr. Presnell that you -- that Mr. Grado may have used the N word?

MR. MOODY: Or something like that.

Q. (By Ms. Molina) Or something like that or another racially derogatory term when referring to Mr. Peters?

A. No, I never told him.

Q. Did he ever ask you whether you had ever heard anybody use racially derogatory remarks?

A. Yes, he asked me.

Q. He asked you. And why did you not tell him?

A. Just because I wasn't 100 percent sure. I mean we had a conversation -- I mean if you're not 100 percent sure of something, don't talk about it. If it's not fact, if it's not clear -- I mean it was years ago, and we -- you know, I couldn't remember everything that happened years ago. And if it's not a fact, don't bring it up. Do not volunteer

[p.65]

information if you're not 100 percent sure, and I'm not 100 percent sure.

Q. This is a conversation that you had with Mr. Presnell?

A. Correct.

Q. So in response to his question of whether you had heard any racially derogatory remarks being used, how -- did you ever even start explaining to him what you believed you may have heard?

A. I don't think I did. I mean I just didn't want to -- that's a pretty serious word to say. I didn't want to volunteer it if I wasn't 100 percent sure.

Q. And who told you not to volunteer it if you weren't 100 percent sure?

A. Mr. Presnell.

MR. PRESNELL: Object to the form. He didn't say that.

A. Mr. Presnell.

Q. (By Ms. Molina) Mr. Presnell told you if you're not 100 percent sure --

A. Not to that specific comment. That was prefaced to this meeting. If you're not 100 percent sure of something, don't' try to dig everything up. Make sure you just explain the facts that you know

* * *

EXHIBIT V

EXCERPTS OF DEPOSITION OF ORAN SAGE

[p.22]

your direct supervisor is the person who made the decision to issue the notice?
A. No.
Q. That's not your understanding?
A. That I don't know.
Q. You don't know?
A. No.
Q. Okay. Then have you ever been told that somebody else other than Mr. Lucero may have made the decision to issue this notice to you?
A. No.
Q. And do you know whether -- again, I'm on Exhibit BB. Do you know whether there was anyone from the Human Resource Department present when you received this notice?
A. At this time, no.
(Exhibit CC marked for identification.)
Q. (By Ms. Molina) Okay. I'm handing to you what's been marked as Exhibit CC. Do you recognize this document?
A. Yes.
Q. Okay. What is this?
A. This is also a written warning on attendance.
Q. Okay. And this was a Disciplinary Status

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Notice issued June 30th of 2000; is that correct?
A. Yes.

Q. Okay. And the Details of Violation with regards to this notice indicates that you had had eight separate incidents of absences within a six-month period; is that correct?
A. Yes.
Q. Okay. Do you know whether these eight incidents on Exhibit CC were different from the incidents on Exhibit BB or in Exhibit BB?
A. No' I don't.
Q. Okay. Why do you think that you received this notice, Disciplinary Status Notice, on June 30th with regards to these eight separate incidents of absences?
A. Can you repeat it?
Q. Why do you think you got this notice, Exhibit CC?
A. Out of compliance with the attendance policy.
Q. Okay. Because you missed eight -- you had eight absences within a six-month period?
A. Correct.
Q. Is that a policy, company policy?
A. I'm unclear on the question.

[p.24]

Q. Do you know whether the company, BCI, whether it's a policy that if you have eight separate incidents of absences within a six-month period, you receive a Disciplinary Status Notice where you're written up for those incidents?
A. That again, I'm not clear on the amount of days.
Q. So you don't know whether this -- whether at the time that you got this notice, whether it was a policy, it was against company policy to do what you had done on this -- as indicated in the Details of Violation that resulted in you receiving this notice? In other words, you don't know if that was company policy supporting the person who made the decision issuing this notice to you?

A. Correct. You know, to my knowledge it's only five days, and here I had eight.
Q. Okay. So at the time, to your knowledge, it was if you had five incidents of absences, you were to receive the DSN?
A. That I don't know.
Q. And you don't know whether, the company policy was if you had eight incidents of absences, you were to receive a DSN?
A. Correct.

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Q. You don't know that?
A. I don't know that.
Q. Okay. What were these incidents? Just generally, do you have a recollection of what caused you to have eight absences during that time period?
A. Not really.
Q. You really don't?
A. It could be sick. It could be personal.
Q. The Details of Violation section of this DSN indicates that further incidents will result in further disciplinary action up to and including termination, per attendance policy. Do you see that?
A. Yes.
Q. Okay. And then in June of 2000 you received a written warning for the eight separate incidents of absences; is that correct?
A. That's this one, yes.
Q. We're on Exhibit CC.
A. Right.
Q. So far eight separate incidents of absences within a six-month period, you were issued a written warning, and that's the DSN; is that correct?
A. Yes.

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Q. Okay. And then, according to this document, also, Exhibit CC, you had previously been warned; is that correct? Do you see the section that reads, "Previous warnings to employee," and it indicates, "Yes"? Do you see that?
A. Yeah, I see that, but I don't recall a verbal warning. I may have.
Q. Okay. Well, according to this exhibit the next line indicates that a verbal coaching session occurred on April 4th, 2000. Do you see that?
A. Yes.
Q. Okay. Do you have a recollection of a verbal coaching session at that time or on that date?
A. Not really, no.
Q. Do you know what a verbal coaching session is?
A. Yes, I do.
Q. What is that?
A. It's where a supervisor or management asks what the problem is, how can it be corrected, you know, gives you a warning of your situation within the policy.
Q. Okay. And this is BCI's policy; is that

[p.27]

correct?
A. Yes.
Q. Not just bulk drivers' policy?
A. Correct.
Q. Okay. And you don't have a recollection of a verbal coaching session?
A. Well, it says here I had one, so I don't remember the actual incident, no.

Q. Okay. All right. And you signed this? At least your employee signature appears towards the bottom of the document. You signed this July 3rd 2000; is that right?
A. Yes.
Q. Okay. And you, didn't make any indication on this document that you disagreed that you had had a verbal coaching session; is that right?
A. No.
Q. Now, let's go back to the Details of Violation of Exhibit CC. The middle of the paragraph reads: "Further incidents will result in further disciplinary action up to and including termination, per attendance policy." Do you see that?
A. Yes.
Q. And again, did you know what the

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attendance policy was at the time that you were issued the DSN?
A. No.
Q. Okay. And then go back to Exhibit BB, please. Exhibit BB is the seven total incidents year to date totaling 11 days. Do you see that?
A. Yes.
Q. Okay. And we've talked about that DSN; is that correct?
A. Yes.
Q. Okay. And so you had seven incidents with respect to attendance in -- that were noted on a DSN dated November 10th, 2000; is that right?
A. Yes.
Q. Okay. Do you know whether the attendance -- the attendance listed in Exhibit BB is different -- the attendance issues discussed in the Details of Violation of Exhibit BB are different than the incidents of absences discussed in the Details of Violation section of Exhibit CC?

A. No.
Q. Is it the same kind of stuff?
A. Yes.
Q. You were absent from work?
A. Yes.

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Q. Okay. And in November, even though you had been told that if you had any further incidents -- in June you had been told that if you had any further incidents of absences, your employment could be terminated; is that correct?
A. Correct.
Q. Okay. November 10th, you had -- by November 10th you had more incidents of absences; is that correct?
A. Yes.
Q. Okay. But you weren't terminated. You received a written warning; is that correct?
A. Correct.
Q. Okay. And on Exhibit BB in the Details of Violation section, it indicates in the middle of the Details of Violation section it reads: "Noncompliance with the attendance policy will result in further disciplinary action up to termination." Do you see that?
A. Yes.
Q. Okay. So then we go to Exhibit J, page 291. So on November 24th you had an incident where you, according to the DSN, left your job assignment without notifying a supervisor. Do you see that?
A. Yes.

* * *

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Q. Okay. Was that an absence that they were saying you were absent from work?
A. No.
Q. Why not?
A. I was at work that day.
Q. Okay. But you left work, according to this DSN?
A. Yes.
Q. Okay. And according to the statement from Steve Jugan that you had no knowledge existed in your personnel file up until yesterday, when counsel for Defendant showed it to you, you refused to reload and told Jake that you had things to do and proceeded to leave without your supervisor's approval, according to the document by Mr. Jugan; is that correct?
A. That was -- that wasn't -- I'm getting confused here. Yes, that's correct.
Q. And you weren't terminated on November 24th; is that correct --
A. Correct.
Q. -- for your conduct? You received a three-day suspension; is that correct?
A. Correct.
Q. Okay. And then in the section, "Previous

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warnings to employee," we're still on page 291 of Exhibit J, it indicates no. But then there's a handwritten explanation in there that reads, "Discussed same issue on 11/14 with Jake present."Do you see that?
A. Yes.
Q. Do you know what that's about?
A. Yes, Ido.
Q. What is it?

A. I had finished my route that day. And when I went in, Jake, our supervisor, was putting a load on a truck. Out of normality, you know, he helps us out, so I thought he was taking out that load. There was nothing else, so I left --
Q. With regards to the November 14th incident that you've just testified about, were you -- did you receive a DSN for that?
A. I believe I did.
Q. Do you have a recollection of actually seeing a Disciplinary Status Notice for that incident of November 14th?
A. I don't quite recall, no.
Q. With regards to the November 14th incident, do you have any recollection of anyone telling you that any further incidents of these

[p.32]

types, of the November 14th and November 22nd incidents, would result in termination?
A. No.
Q. Has your employment -- strike that.

Have you received any other write-ups for attendance or absences or for anything else with BCI other than what I've shown you?
A. That I'm not too sure of, no.
Q. Because you don't know what's in your personnel file?
A. Correct.
Q. Okay. Did your employment ever terminate as a result of any of the DSNs that we've talked about?
A. No.
Q. Okay. So there hasn't been a break in your employment where yon were fired as a result of these DSNs and then you were brought back?
A. No.

Q. As an employee at BCI, do you go through training on the subject of employment discrimination?
A. Yes.
Q. Okay. When was the last time you had any training on the subject of employment

[p.33]

discrimination?
A. That I don't recall.
Q. Okay. Was it in the last -- in the last year? And I'm talking about in 2003.
A. That I don't recall, either.
Q. Have you -- in this training, do you have a recollection of ever getting any training on the issue of race discrimination?
A. That I don't recall, either.
Q. Do you have any recollection, to the extent you can -- I know you can't recall when you've had the training on employment discrimination. Do you recall who the trainer was?
A. No, not at the time, no.
Q. Has anyone -- has anyone from the local plant or the local facility here in Albuquerque talked to you about any problems at Coca-Cola with regards to management?
A. No.
Q. Has anybody from the Phoenix office talked to you?
A. No.
Q. Has anybody from the BCI office out of Los Angeles talked to you?
A. No.

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Q. Has anybody ever talked to you about any problems at all that you may have experienced during your employment at

Coca-Cola?
A. Can you rephrase?
Q. Has anyone from BCI, Los Angeles, Phoenix or the local facility or anybody associated with BCI talked to you about any problems, asked you whether you've ever had any problems in your employment at BCI?
A. You'll have to be more specific to the content of the question. You know, there's been times where they've asked me if I've had problems out on the route, if I've had problems with equipment, that type of thing, but . . .
Q. Has anyone asked you whether you've had any problems with regard to Mr. Grado, Cesar Grado?
A. No.
Q. Do you know if anybody has -- anybody has -- strike that.
Since the filing of -- or since the termination of Mr. Stephen Peters, has anybody talked to you about problems at Coca-Cola?
A. Just --
MR. PRESNELL: Object to the form.
A. No.

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Q. (By Ms. Molina) Okay. Do you know whether Mr. Cesar -- whether Cesar Grado ever had a meeting with Human Resources concerning his management style or his management of employees?
A. No' I don't know.
Q. You don't know?
A. That I don't know.
Q. Okay. What is your understanding or do you have an understanding of what the company policy is with regards to insubordination by employees?
A. I have some idea. I'm not too clear on it, no.
Q. What is your idea?

A. Total refusal of not taking -- not following orders.
Q. Anything else?
A. No.
Q. Where have you gotten this understanding about what insubordination is?
A. That I don't recall on where I got the information.
Q. Okay. You've worked for BCI for ten and a half years?
A. Correct.
Q. Okay. Then what is the -- what is your

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employer's policy with regards to insubordination?
A. I'm not too clear on that subject.
Q. Would you look back at Mr. Jugan's statement on page 292 of Exhibit J?

According to Mr. Jugan, in the middle of this statement he indicates, "Kelly refused to reload and told Jake that he had things to do and then proceeded to leave without his supervisor s approval." Do you see that?
A. Yes.
Q. Okay. Using your own definition, would you have committed insubordination by refusing to reload?
A. Yes.
Q. Were you ever written up for insubordination?
A. No. I was never ordered, like he says I was.
Q. Okay. But based on what Mr. Jugan said in this statement, based on what he said in here, you would have been written up for insubordination; is that correct?

MR. PRESNELL: Object to form.

Q. (By Ms. Molina) According to your definition of insubordination?

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MR. PRESNELL: Object to form.

A. Yes.

MS. MOLINA: We're going to take a quick break, and I'm going to go over my notes. I'm pretty much close to being done.

(Recess taken.)

MS. MOLINA: We're almost done.

THE WITNESS: Okay.

Q. (By Ms. Molina) Have you ever talked to Mr. Peters on the phone concerning Coca-Cola? And more specifically recently, like within the last three to four months?

A. Yes, I talked to him on the phone. The time frame, I'm not too clear on.

Q. Did he call you or did you call him?

A. I believe -- I think he called me.

Q. Okay. And do you remember what he asked you?

A. Honestly, no, I don't.

Q. Well, do you remember him asking you whether you ever had any problems with anybody at Coca-Cola?

A. No.

Q. You don't recall?

A. I don't recall.

EXHIBIT W

Smith's
6125 4th St. NW
ALBUQUERQUE, NM 87107
505-344-3509

Rx No. 6784561

Peters, Stephen
208 Fentiman SW
Albuquerque, NM 87105
(505) 452-2593
Dr. Grady, D.O., M.D.
Nasonex 50MCG Nasal SUS SCHE
NDS: 00085-1197-01
QTY: 17
Use two sprays in each nostril daily

Fill Date: 9/29/2001
TX# 1255068

Price $59.89
Pay $15.00

PCS TP REF# 911375

PRESBYTERIAN
Healthcare Services

Rio Bravo (505) 462-7777

Return to School or Work

Name: Stephen Peters

is my patient and has been under by care from 9/29/01 to ___
and is able to return to school/work on 10/1/01.

Dr./s/_____
Date: 10/3/01

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Civ-02-1644
JOB/RHS (ACE)

[Filed March 31, 2004]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,	)
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, d/b/a PHOENIX COCA-COLA BOTTLING COMPANY and COCA-COLA BOTTLING COMPANY OF ALBUQUERQUE, Defendant.	)

SUPPLEMENTAL DECLARATION OF SHERRY PEDERSEN

1. I am Sherry Pedersen. I am currently employed by BCI Coca-Cola Bottling Company of Los Angeles ("BCI") in the position of Employee Relations Manager. In September and October of 2001, I held the position of Senior Human Resources Administrator. This declaration is based upon my personal knowledge, and/or my review of the official BCI business records referenced herein. My job responsibilities include maintenance of personnel files for all employees working at BCI's Albuquerque, New Mexico facility.

2. BCI time records, attached as Exhibit 1 hereto, indicate that Arturo Lopez's last day worked for BCI was Monday, November 19, 2001. This corresponds with the Resignation Statement completed by Cesar Grado on November 28, 2001 (Exhibit 2 hereto), which indicates that Mr. Lopez had not returned to work and had accepted employment elsewhere, and also that the Termination Notice completed for Mr. Lopez, wherein I listed his date of termination as November 23, 2001. See Exhibit 3 hereto. Because Mr. Lopez had apparently quit and accepted employment elsewhere, he was deemed to have voluntarily abandoned his job. This is standard practice when an employee quits without notice. Although BCI reserves the right to invoke its "no-call, no-show" policy to involuntarily terminate employees who fail to come in for three days without notifying a supervisor, this policy is typically not applied in circumstances of obvious job abandonment. I do not know why a second Resignation Statement was completed in December by Mr. Grado with respect to Mr. Lopez's termination. From the dates on the Termination notice, it appears that it took a while to complete all the necessary administrative processes necessary to remove Mr. Lopez from BCI's employee rolls. However, BCI records for Merchandisers for 2001 and 2002, which were produced to the EEOC in this matter, definitively show that Mr. Lopez never returned to work at BCI after November 19, 2001. He was designated as ineligible for rehire and thus could not have returned to work for BCI even if he had wished to do so. See Exhibit 3 hereto.

3. Mr. Peters' personnel file contains an Employee Acknowledgement Form signed by Mr. Peters, stating that he received and understood copies of BCI's equal employment opportunity and sexual harassment policies. See Exhibit 4 hereto.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of March, 2004.

/s/_____
SHERRY PEDERSEN

EXHIBIT 1

Cost Per Case Recap
DSM CESAR GRADO
Week Ending 11-25-01

Cases Per Hour	64.86
Weekly Cases	40930
CPC	0.183

Merchandiser Name	**Mon.**	**Tues.**	**Wed.**	**Thurs.**
David Garduno	13.65	5.40	11.97	7.93
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	12.73	10.17	0.00	61.85
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	32	29.85		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	8		0
	Hrly Rt	**Pay**		
	9.	762.975		

Merchandiser Name	**Mon.**	**Tues.**	**Wed.**	**Thurs.**
Mark Sedillo	13.97	13.10	12.75	13.88
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	11.38	10.35	0.00	75.43
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	32	43.43		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	8		0
	Hrly Rt	**Pay**		
	9	946.305		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Barry Lafaver	15.93	13.15	12.48	3.42
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	0.00	0.00	11.33	56.31
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	32	24.31		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	8		0
	Hrly Rt	**Pay**		
	9	688.185		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Monica Lovato	0.00	0.00	13.00	5.00
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	10.50	0.00	0.00	28.5
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	28.5	0		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	0		0
	Hrly Rt	**Pay**		
	8	228		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Branden Grindel	13.18	13.75	11.42	0.00
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	0.00	11.38	9.35	59.08
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	32	27.08		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	0		0
	Hrly Rt	**Pay**		
	9.25	671.735		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Arturo Lopez Jr	8.57	0.00	0.00	0.00
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	0.00	0.00	0.00	8.57
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	8.57	0		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	0		0
	Hrly Rt	**Pay**		
	9	77.13		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Mathew Montoya	0.00	0.00	13.56	6.75
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	15.95	0.00	6.62	42.88
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	40	2.88		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	0		0
	Hrly Rt	**Pay**		
	8	354.56		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Ernesto Gutierrez	9.93	0.00	13.20	7.48
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	0.00	0.00	0.00	30.61
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	30.61	0		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	0		0
	Hrly Rt	**Pay**		
	9	275.49		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
James Gallegos	0.00	0.00	0.00	0.00
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	9.97	9.15	9.47	28.59
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	28.59	0		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	0		0
	Hrly Rt	**Pay**		
	8	228.72		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
David Lucaro	13.96	13.17	12.77	3.23
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	0.00	0.00	9.08	52.23
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	32	20.23		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	8		0
	Hrly Rt	**Pay**		
	9	633.105		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Leonardo Baca	0.00	0.00	12.87	8.98
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	12.02	12.73	5.85	53.50
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	32	21.5		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	8		0
	Hrly Rt	**Pay**		
	9	650.25		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Greg Sullivan	15.83	11.65	0.00	0.00
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	12.18	11.07	8.70	59.63
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	32	27.63		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	8		0
	Hrly Rt	**Pay**		
	9	733.005		

Merchandiser Name	Mon.	Tues.	Wed.	Thurs.
Vincent Martinez	13.4	13.65	14.27	0
	Fri.	**Sat.**	**Sun.**	**Ttl Hr**
	13.18	10.15	9.27	73.90
	Reg Hrs	**OT Hrs**		**Vac Hrs**
	32	41.9		0
	Sck Hrs	**Hol Hrs**		**Lt Duty**
	0	8		0
	Hrly Rt	**Pay**		
	9	925.65		

Hours Cost	Ttl Hr	Reg Hrs	OT Hrs
	631.1	392.27	238.8
	Vac Hrs	**Sck Hrs**	**Hol Hrs**
	0	0	56
	Lt Duty	**Hrly Rt**	**Pay**
	0	0	7175.11
Mileage Cost			296.77
			7473.88

EXHIBIT 2

RESIGNATION STATEMENT

Name: Arturo Lopez Date: 11-28-01

To: Human Resources Department

I, _____, am voluntarily resigning my employment at Phoenix Coca-Cola Bottling Company as of (date) for the following reasons:

I have discussed my resignation with my supervisor, and I am voluntarily resigning.

I am____ am not____ leaving my position to accept a position with another company.

Employee Signature:
Date:

Supervisor's Comments:

Arturo has not returned to work or called anyone for over a week. He has accepted employment with Smiths.

Supervisor's Signature: /s/_____
Date: 11-28-01

EXHIBIT 3

EMPLOYEE TERMINATION NOTICE/PROPERTY CLEARANCE CHECKLIST
IN CASE OF INVOLUNTARY TERMINATION, CONSULT HUMAN RESOURCES BEFORE COMPLETING THIS FORM.

EMPLOYEE #/SSN: XXX-XX-XXXX

NAME: LOPEZ, ARTURO
POSITION: Merchandiser
FACILITY NAME: Albuquerque
TERMINATION DATE: 11/23/01
TERMINATION REASON: Voluntary
Last Date Worked 11/20/01

REHIRE CONSIDERATION

No. No Notice. No Call No Show 3 days

Input By: SP
Date: 11/28/01

PROPERTY CLEARANCE CHECKLIST

SUPERVISOR: Use list below as a guide to recover all Company property. Sign all items received by placing your initials next to the item under column headed "Cleared By". Fill in N/A (Not Applicable) next to all items not pertaining to employee. Return items to appropriate departments.

I.D./ACCESS CARDS/CG
TIMECLOCK CARD/CG
SAFETY EQUIPMENT/CG
UNIFORMS/CG
PAGER/CG
LIBRARY MATERIALS/CG

I state that I possess no property belonging to the Company, nor any outstanding monies owed the Company.

Employee Signature	Date
/s/ _____ Immediate Supervisor Signature	1-10-02
/s/ _____ Second Level Signature	1-14-01
/s/ _____ Human Resources Signature	1-10-02

EXHIBIT 4

DESERT SUN DIVISION
EMPLOYEE ACKNOWLEDGMENT

This is to acknowledge that I have received copies regarding the following policies, procedures, rules and regulations of Desert Sun Division and fully understand the contents.

I understand that the policies, procedures, rules and regulations contain important information regarding my employment with the Company and my obligation as an employee to adhere to them. I further understand that the Company may change, rescind or add to any policies, benefits or practices described herein from time to time at its sole and absolute discretion with or without prior notice. Material changes will be made known to employees through the usual channels of communication within a reasonable period of time.

I am fully aware that violations of same may result in disciplinary action up to and including termination.

EQUAL EMPLOYMENT OPPORTUNITY POLICY

EQUAL OPPORTUNITY POLICY FOR INDIVIDUALS WITH DISABILITIES' SPECIAL DISABLED VETERANS & VIETNAM ERA VETERANS

SEXUAL HARASSMENT POLICY-10/98

ATTENDANCE POLICY

EMPLOYEE RULES & REGULATIONS

WORKING OFF THE CLOCK

NON-SMOKING POLICY

CODE OF BUSINESS CONDUCT

VEHICULAR ACCIDENT REVIEW AND DISCIPLINARY ACTION

ACCIDENT REPORTING PROCEDURES

WORKER'S COMPENSATION LAW

OCCUPATIONAL SAFETY POLICY

SMALL VEHICLE POLICY

ALCOHOL AND DRUG USE POLICY

FAMILY MEDICAL LEAVE ACT (FMLA)

ANTITRUST COMPLIANCE POLICY

Employee Name (print): Stephen B. Peters
Employee Signature: /s/_____
Date: 1/25/99
Facility Name & Location: Coca Cola Enterprise. Alb NM

EXHIBIT

EXCERPTS OF DEPOSITION OF ORAN SAGE

[p.6]

A. There was only a couple of months that were changes -- you know, company changes, different -- gave me a side load position.
Q. And just generally, how does that differ from the bulk driver position?
A. Bulk is mainly to large grocery store chains. And the side load is convenience stores, Circle Ks, gas stations.
Q. Who is your supervisor currently?
A. Jake Lucero.
Q. Have you had other supervisors other than Mr. Lucero as a bulk driver?
A. I think Jake is our first supervisor. It's mostly been management.
Q. Who is Mr. Lucero's supervisor?
A. That is Martin Aranda.
Q. And do yon know who Mr. Aranda's supervisor is?
A. I think that would be Robin Dotson.
Q. Robin?
A. Robin Dotson.
Q. Okay. Do you know a Coca-Cola employee by the name of Cesar Grado?
A. Yes.
Q. How do you know of him?

[p.7]

A. He's supervisor over sales, merchandisers. That's about it.

Q. Okay. Have you ever worked with him -- I'm sorry' have you ever worked under his management?
A. Yes, years ago.
Q. Okay.
A. A short time.
Q. In what position?
A. I was still -- he was our supervisor for about a two-week period.
Q. Do you work with him now?
A. No, not directly.
Q. Do you work with him indirectly?
A. Very rarely.
Q. Rarely?
A. (Witness nods head.)
Q. Under what circumstances would you work with him?
A. If I can't get ahold of a salesman through paging or a cell phone, I would have to go to him to have him do the communications for me.
Q. Would you please turn to Exhibit -- and these are the exhibits I'm talking about, the exhibit book here, and these are the tabs that

[p.8]

identify the exhibits as A, B, C, D and so on.
A. Okay.
Q. Exhibit J, please. And that exhibit is several pages. And I'm going to direct your attention, please, to the third page of that exhibit, page 291 in the right-hand corner. Are you reviewing it?
A. Um-hum.
Q. Okay. Do you recognize this document?
A. Yes, I do.
Q. This is a Disciplinary Status Notice, right?
A. Yes.

Q. Do you have a recollection of what happened with regards to this incident that resulted in a DSN?
A. Yes, I do.
Q. What happened?
A. Okay. My scheduled day off is Wednesdays and Sundays. This particular incident, Wednesday was the day before Thanksgiving, and the following Monday -- or the Monday before, I was asked to work on Wednesday, So I told the supervisor, "Yes, I'll volunteer to work, but I can only work until 11:00, 12:00 in the afternoon," because we had plans to go

[p.9]

out to Gallup to see my grandmother. And he agreed to this. Okay?

I came in. I ran my normal route. I came back two more times. I picked up two other separate loads, ran those. About 11:30, 11:45, when I finished with the third load, I came in and I called my supervisor, who was Jake Lucero. And I told him, I says, "It's getting to be noon," you know. I said, "What do you want me to do?" And he asked me if there were any other loads still there that needed to go out. And I replied, "Yes," if I'm correct, there were three left or something to this effect. And he told me, he says, "Well, I don't know. Do what you've got to do," he told me. So I took that as the agreement that we had for me leaving at a certain time, it was okay to leave.

And that conversation was very short, and so I left. We left town. And when I came back on Friday after I had done my route, then they showed me this disciplinary paperwork.
Q. "They" being your supervisor?
A. Yes.
Q. And your supervisor was Mr. Lucero?

A. Yes.
Q. So did you agree with this write-up that

[p.10]

you got?
A. No. I thought, you know, the supervisor and I were in a verbal understanding that I could only work until a certain time, and I had arrangements, and no, I didn't agree with it.
Q. Okay. Do you have a recollection of whether anyone from the Human Resource office at your facility was present when you received this notice?
A. If I remember right, Steve Jugan, J-U-G-A-N, I think it is, was present, and he was our manager.
Q. When you say your manager, meaning managers for both drivers?
A. For the sales department over the drivers, yes.
Q. But you were in the sales department?
A. Yes.
Q. What other departments are there other than the sales?
A. Sales, full service, cold drink, and then they get into the office. I don't know too much about that.
Q. Okay. So Steve Jugan was your manager, he was the manager for the sales department?

[p.11]

A. At the time, yes.
Q. At the time, was he, did he work with Human Resources, the Human Resources Department?
A. On disciplinarian, he must have. I do not really know.
Q. Okay. But Mr. Jugan was present when you received this notice; is that correct?
A. Yes.

Q. But you don't know if he was representing the Human Resource Department or if he was there as a manager?
A. He was my manager.
Q. He was your manager?
A. Um-hum.
Q. Who worked with Human Resources at the time?
A. I'm sure it was Steve Jugan and Jake Lucero, manager and supervisor.
Q. Do you know if BCI has a Human Resources Department?
Q. And who works in that department now?
A. Sherry Peters. Kim -- I don't know her last name.
Q. Is that Sherry Pederson?

[p.12]

A. Pederson. Okay.
Q. Okay. At the time you received this notice, who held the position that Ms. Pederson holds now? Who held the position then?
A. There have been so many people going through that department. I don't remember. I don't recall.
Q. Okay. At the time that you received this notice, was it your understanding that BCI was issuing this -- I'm sorry, that Jake Lucero, your supervisor, was the person who was issuing this Disciplinary Status Notice to you?
A. That's kind of unclear to me.
Q. Oh, okay. It's unclear to me, too. Okay. At the time that you received this notice dated 11/24/00, was it your understanding that the notice -- you were suspended -- you were suspended for three days in this notice, that that suspension came from your supervisor, Jake Lucero?
A. Yes.
Q. Okay. Did anyone ever tell you that Jake Lucero was not the person who was issuing the discipline?
A. No.

Q. Okay. Have you ever been told at any time

[p.13]

during your employment at BCI that someone from the Human Resource Department is the person who is actually the person who is disciplining employees and not supervisors?
A. No.
Q. Would you turn to page 292?
A. Okay.
Q. This is a typewritten statement by Steve Jugan; is that correct?
A. Yes.
Q. Have you seen a copy of this prior to today's deposition?
A. No.
Q. Okay. Do you want -- would you please read this and let me know if this is the incident that you have already testified about?
A. Yes.
Q. So this is the incident that resulted in the Disciplinary Status Notice on page 291; is that correct?
A. Yes.
Q. Okay. And you hadn't seen a copy of that statement, sir?
A. Yes, this is actually the one I saw yesterday.

* * *

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Q. Has anybody ever talked to you about any problems at all that you may have experienced during your employment at Coca-Cola?
A. Can you rephrase?
Q. Has anyone from BCI, Los Angeles, Phoenix or the local facility or anybody associated with BCI talked to you about

any problems, asked you whether you've ever had any problems in your employment at BCI?

A. You'll have to be more specific to the content of the question. You know, there's been times where they've asked me if I've had problems out on the route, if I've had problems with equipment, that type of thing, but . . .

Q. Has anyone asked you whether you've had any problems with regard to Mr. Grado, Cesar Grado?

A. No.

Q. Do you know if anybody has -- anybody has -- strike that.

Since the filing of -- or since the termination of Mr. Stephen Peters, has anybody talked to you about problems at Coca-Cola?

A. Just --

MR. PRESNELL: Object to the form.

A. No.

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Q. (By Ms. Molina) Okay. Do you know whether Mr. Cesar -- whether Cesar Grado ever had a meeting with Human Resources concerning his management style or his management of employees?

A. No' I don't know.

Q. You don't know?

A. That I don't know.

Q. Okay. What is your understanding or do you have an understanding of what the company policy is with regards to insubordination by employees?

A. I have some idea. I'm not too clear on it, no.

Q. What is your idea?

A. Total refusal of not taking -- not following orders.

Q. Anything else?

A. No.

Q. Where have you gotten this understanding about what insubordination is?
A. That I don't recall on where I got the information.
Q. Okay. You've worked for BCI for ten and a half years?
A. Correct.
Q. Okay. Then what is the -- what is your

[p.36]

employer's policy with regards to insubordination?
A. I'm not too clear on that subject.
Q. Would you look back at Mr. Jugan's statement on page 292 of Exhibit J?

According to Mr. Jugan, in the middle of this statement he indicates, "Kelly refused to reload and told Jake that he had things to do and then proceeded to leave without his supervisor's approval." Do you see that?
A. Yes.
Q. Okay. Using your own definition, would you have committed insubordination by refusing to reload?
A. Yes.
Q. Were you ever written up for insubordination?
A. No. I was never ordered, like he says I was.
Q. Okay. But based on what Mr. Jugan said in this statement, based on what he said in here, you would have been written up for insubordination; is that correct?

MR. PRESNELL: Object to form.

Q. (By Ms. Molina) According to your definition of insubordination?

[p.37]

MR. PRESNELL: Object to form.

A. Yes.

MS. MOLINA: We're going to take a quick break,

and I'm going to go over my notes. I'm pretty much close to being done.

(Recess taken.)

MS. MOLINA: We're almost done.

THE WITNESS: Okay.

Q. (By Ms. Molina) Have you ever talked to Mr. Peters on the phone concerning Coca-Cola? And more specifically recently, like within the last three to four months?

A. Yes, I talked to him on the phone. The time frame, I'm not too clear on.

Q. Did he call you or did you call him?

A. I believe -- I think he called me.

Q. Okay. And do you remember what he asked you?

A. Honestly, no, I don't.

Q. Well, do you remember him asking you whether you ever had any problems with anybody at Coca-Cola?

A. No.

Q. You don't recall?

A. I don't recall.

EXHIBIT

EXCERPTS OF DEPOSITION OF JEFF KATT

[p.46]

couldn't work, that he had something planned. Cesar told him, "I'm not asking you, I'm telling you," or something like that, I think he said. I cant remember specifically. And that was pretty much it.
Q. Did Mr. Peters call you and let you know that he had just -- that he had had a conversation with Mr. Grado?
A. Yes.
Q. Okay. How soon after you had talked to Mr. Peters and Mr. Peters told you that he would call Mr. Grado, that he was going to call Mr. Grado, how much time after that phone call did Mr. Peters call you back?
A. Probably within a half hour.
Q. Do you recall whether Mr. Peters said anything else to you during the second phone call on Friday that he had with you?
A. I can't remember, no.
Q. Did you say anything to him concerning what Mr. Grado told him during this phone conversation?
A. I'm sorry. could you repeat that?
Q. Did you tell Mr. Peters anything about what Mr. Grado had said to Mr. Peters during the phone conversation that Friday afternoon?

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A. Just other than the fact that what we initially discussed, that Cesar had mentioned that if he didn't work that he could reassign his days off.

Q. You said this to Mr. Peters?
A. That's right.
Q. Meaning that he would -- Mr. Peters would lose his Saturday and Sunday off?
A. That it could possibly be reassigned to like Wednesday and Thursday or something like that.
Q. His days off?
A. Correct.
Q. And those days off that he had earned due to his -- as a result of his seniority?

MR. PRESNELL: Object to the form.

Q. (By Ms. Molina) Is that correct?
A. It was more desirable to be off for Saturday and Sunday for most merchandisers, and that was his opportunity, I guess -- or he had that availability more than anybody on my list, yeah.
Q. Because of his seniority?
A. Right
Q. And Mr. Grado told you that if Mr. Peters didn't work on Sunday, that he would reassign his days off?

[p.48]

MR. PRESNELL: Object to the form

Q. (By Ms. Molina) Is that right?
A. I'm sorry, could you repeat that?
Q. Mr. Grado mentioned to you that if Mr. Peters didn't work on Sunday, that he would reassign his days off?

MR. PRESNELL: Object to the form.

A. No, he didn't a --
Q. (By Ms. Molina) All right. What did Mr. Grado tell you about the days off?
A. He said, "Tell him if he doesn't work that Sunday, since he doesn't have to have Saturday and Sunday off, that I can reassign."

Q. Other than what you've already testified about with regards to your second conversation with Mr. Peters on Friday afternoon, was there anything else that was said between you?
A. No.
Q. Okay. And then did you talk to Mr. Grado at any other time before you spoke with him between 5:00 and 6:00 Friday afternoon?
A. Not that I recall, no.
Q. Okay. So after you spoke to Mr. Peters the second time, what did you do?
A. At that point, just pretty much went on

[p.49]

the daily routine to get everything finished up.
Q. And then what happened?
A. After that, then I spoke with Cesar about, "What are we going to do to get that Sunday taken care of?"
Q. Okay. Did you speak with Cesar on the phone?
A. Yes.
Q. Did you call him or did he call you?
A. I can't remember.
Q. So what was the conversation during that call?
A. It was something to the regard that that Sunday was going to be open and that we were going to have to get it filled.
Q. Did Mr. Grado say anything else about Mr. Peters during that Conversation?
A. Not that I can remember.
Q. Okay. Did Mr. Grado tell you during that conversation that Mr. Peters' employment was terminated?
A. No.
Q. Did anybody tell you that Friday afternoon that Mr. Peters' employment had been terminated?
A. No.

* * *

[p.94]

I telephone conversation?
A. I didn't say anything.
Q. Did you tell me that you could overhear the person on the other end of the line?
A. No.
Q. Did I discuss that telephone conversation with you after it concluded?
A. No.
Q. Did you ask me about that telephone conversation after it concluded?
A. No.
Q. Did you tell me after the telephone conversation concluded that you had overheard it?
A. No.
Q. One EEOC staff member was behind the glass at the time?
A. I believe so, yes. When we walked in, we checked in with him, and I believe, yes, he was still there.
Q. Mr. Katt, during your time at work at Coca-Cola Bottling Company of Albuquerque, were you a member of the Human Resources Department?
A. No.
Q. Were you ever a member of the Human Resources Department?

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A. No.
Q. Did you, during your employment with Coca-Cola, ever participate in the establishment or implementation of the attendance policy?
A. No.

Q. During your employment at Coca-Cola, did you ever participate in the establishment or implementation of the no call, no show policy?
A. No.
Q. During your employment at Coca-Cola Bottling Company of Albuquerque, did you participate in the establishment or implementation of the insubordination policy?
A. No.
Q. In your declaration, Mr. Katt, you stated you did not have disciplinary authority over any merchandiser, including Mr. Peters, Ms. Lovato, Mr. Lopez or Mr. Mirabel; is that true?
MS. MOLINA: Objection. The document is entitled statement, not declaration.
MR. PRESNELL: Yes, Exhibit MM. We all know what we're talking about.
Q. (By. Mr. Presnell) Is that a true statement, Mr. Katt?
A. Yes, that's true. I did not have

[p.96]

direct --
Q. All right. Did you at any time at Coca-Cola Bottling Company of Albuquerque have any disciplinary decision-making authority over any other employee?
A. No.
Q. With respect to Mr. Peters' did you participate in the decision by Coca-Cola Bottling Company of Albuquerque to terminate his employment?
A. No.
Q. Did Pat Edgar or Sherry Pederson or Cesar Grado call you in to the termination meeting on October 2nd, I believe, 2001?
A. No.

Q. Your testimony earlier about, I believe it was, Mr. Martinez, Mr. Lopez, Mr. Mirabel and Ms. Lovato being insubordinate, do you recall that testimony?
A. Yes.
Q. Okay. Is that based upon your personal understanding of what insubordination is or is not?
A. I don't understand the question.
Q. You testified that it was your opinion that Mr. Martinez, Mr. Lopez, Mr. Mirabal and Ms. Lovato were insubordinate; is that right?

[p.97]

A. Correct.
Q. All right. And that's your opinion based upon your understanding of the definition insubordination?
A. Correct.

MR. PRESNELL: Those are all the questions I have. Thank you.

MS. MOLINA: All right. I don't have anything further.

THE WITNESS: Thank you.

(The deposition concluded at 4:02 p.m.)

EXHIBIT

EXCERPTS OF DEPOSITION OF STEPHEN BRIAN PETERS

[p.85]
needs are for those stores he has?

MS. MOLINA: Object to form, speculation. Go ahead.

Q. (By Mr. Presnell) Is that right?

A. The account manager has a route, just like I have a route. He has certain stores that he has to fill up with sodas, as far as he knows what to order.

Q. Right.

A. He has a route.

Q. Okay.

A. Just like I have a route.

Q. And an account manager is only responsible for his route, or is he responsible for other account manager's routes?

A. As far as to my knowledge, he's only responsible for his route.

Q. Okay. So that account manager would only have knowledge of the merchandising needs of his accounts?

A. Of his accounts.

Q. Okay. When you were employed at Coca-Cola Bottling Company between 1999 and 2001, did you ever make any internal complaints at the company?

A. I can't recall. I think I made a complaint as far as after -- I can't recall.

Q. Okay. Something's in your mind. You can't

[p.86]

recall whether you made a complaint or not?

A. Yeah. I mean, if you would rephrase that, as far as a

complaint against --

Q. Well, I mean a complaint -- let me try to break it up for you. Maybe that will help you. Did you ever make a formal complaint between 1999 and 2001 about any work-related problem?

MS. MOLINA: Objection, ambiguous, vague. Go ahead.

A. Not that I recall.

Q. (By Mr. Presnell) Okay. Do you recall ever completing a Complaint type form or any other type of written form about any work-related problem?

MS. MOLINA: Same objection. Go ahead.

A. Oh, I think to Bill Donnelly, about the conversation we got into. Maybe that's -- if I recall, I might have filled something out about that.

Q. (By Hr. Presnell) Okay. Do you remember any other written complaints you may have made during that time?

A. I can't recall.

Q. Okay. What was the nature of your complaint against Mr. Donnelly?

A. The nature of it was that he came in the store hollering at me.

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Q. And your complaint was what, in general terms?

A. I can't recall everything that I wrote in the complaint, but it was probably based on disrespect, disrespecting me.

Q. Did you ever complain, whether formally or informally, that Mr. Donnelly discriminated against you because of your race?

A. I can't recall.

Q. Did you ever make any complaints, formal or informal, that somebody at somebody at Coca-cola discriminated against you because of your race?

A. By "any complaints," do you mean -- are you asking me did I make any complaints at Coca-Cola?
Q. Correct.
A. I never made any complaints at Coca-Cola, filled out any complaints at Coca-Cola.
Q. Okay. Did anyone ever make any complaints against you while you were at Coca-Cola?
A. Any complaints against me as far as, what kind of complaints?
Q. Work-related conduct, you acted inappropriately or you did this or did that.
A. Mr. Donnelly.
Q. Any others, that you recall?
A. Not that I recall.

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Q. Was Mr. Donnelly's complaint against you, did it arise out of the same incident that your complaint against him arose out of?
A. Yes, sir.
Q. Okay. There weren't two separate incidents that we're talking about?
A. No, sir.
Q. Okay. What year was the incident with Mr. Donnelly that resulted in these complaints?
A. If I'm not mistaken, I think it was 1999.
Q. Did Coca-Cola take any disciplinary action against you arising out of those complaints?
A. Yes, sir.
Q. What was the discipline?
A. I think I was suspended for two days, if I'm not mistaken.
Q. Were you given any warnings?
A. Any warnings?
Q. As part of that discipline.

A. An a warning, you mean afterwards, or -- no, sir.
Q. That's a good clarification. Let me restate the question. In addition to the two-day suspension, were you warned that further incidents could result in termination
A. Not that I recall, as far as --

[p.89]

Q. Okay. You don't recall one way or the other?
A. No, I don't recall.
Q. Did you review the discipline report arising out of that incident in 1999?
A. I think I may have.
Q. Who spoke with you about the discipline, the two-day suspension at that time, in 1999?

MS. MOLINA: Objection as to form, assuming facts not in evidence.

A. A lady in Human Resources, Eddie Esquivel and Bill Donnelly.
Q. (By Hr. Presnell) Okay.
A. I can't recall if it was Sherry Peterson or not at that time. I don't think it was her at that time -- it wasn't her at that time, I don't think so. It was another lady.
Q. Was this one meeting with all three of those persons there, or three separate meetings?

MS. MOLINA: Objection to the form of the question, assuming facts not in evidence. Go ahead.

A. One meeting.
Q. (By Mr. Presnell) And the HR person, who was a female, was there?
A. Yes.
Q. And Mr. Esquivel and Mr. Donnelly, correct?

[p.90]

A. Yes.
Q. And you?
A. Yes, sir.
Q. All right. Let me hand you this document. Take a second to look at that, Mr. Peters. It was produced to us by the EEOC in this lawsuit. Is that the disciplinary status notice arising from the incident that you and I were just talking about?
A. Yes.
Q. Okay. And this document shows the two-day suspension that you referenced?
A. Yes.
Q. Okay. It's noted on this document on the employee signature line, "Refused to sign"; do you see that?
A. Yes.
Q. Is that correct, that you refused to sign this?
A. Yes, sir.
Q. Did you review this document and refuse to sign it?
A. Yes, sir.

MR. PRESNELL: All right. I'd like to make that Exhibit 1, please.

Mr. Peters, I need to take a short break because I need to make a copy, because this Exhibit 1 is actually

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a two-page document and I only showed you one page, okay
A. Okay.

(A discussion was held off the record.)

Q. (By Mr. Presnell) Okay, Mr. Peters. We'll do this again. Exhibit 1 is really a two-page document identified on the bottom as Documents 111 and 112, right
A. Uh-huh.

Q. And as you'll notice in the description on the first page, it says "Over," and that's the second page, and I forgot to have that copied. So I apologize for that. But if you will take a look at that and just verify that's from the same document.

MS. MOLINA: Counsel, what are you asking him to verify? If it's the same document? Same document as what? I want that clear on the record.

MR. PRESNELL: Yes. The disciplinary status notice is a two-page document, and I forgot to have the second page copies.

MS. MOLINA: Okay.

MR. PRESNELL: All right. So let's make both these pages Exhibit 1.

(Exhibit 1 was marked for identification.)

Q. (By Mr. Presnell) And I believe I asked you this, but this is the document you refused to sign?

A. Yes, If I recall, that's it.

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Q. Okay. All right.

MS. MOLINA: For the record, Counsel was pointing specifically to page 111.

A. I don't remember this, that second part. I don't remember that.

Q. (By Mr. Presnell) All right. This is a document that the EEOC produced to us and labeled 111 and 112. It's a two page document.

A. Uh-huh.

Q. So let me start over. I've made it Exhibit 1 already. Have you ever seen this document? And I mean the two pages, both pages, front and back.

A. I remember seeing this first page, but I just don't remember the second page.

Q. You don't deny that you read it, you just don't recall?

A. I don't remember. I don't recall seeing it.
Q. I want to make sure we're clear. You're not claiming that this is something that's made up, are you, this second page?
A. I'm not claiming that. I'm just saying I don't recall seeing that.
Q. You don't remember seeing that one way or the other?
A. Yes, sir.

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Q. All right. And you understand, even though this is a copy that's two pages, it's really a front and back of the disciplinary status notice of September 17, 1999?

MS. MOLINA: Objection to the form of the question. That's assuming facts not in evidence. It's not presented as a one-page form.

MR. PRESNELL: Well, you produced it, Ms. Molina. Is it one document or two documents?

MS. MOLINA: Well, Counsel, we produced it only after we got it from your client, BCI Coca-Cola. That's where we got the document, and we got it in the state it is now. No, we don't have the original where we can verify whether it's one page or two pages.

MR. PRESNELL: Okay. Well, is the EEOC claiming this is two separate documents and they don't go together?

MS. MOLINA: We're not claiming that, Counsel. We are claiming this is the way the document was presented to the EEOC in the investigation of this case.

MR. PRESNELL: Well, that's what I said. This is the disciplinary status notice. And I'm asking Mr. Peters if this was what was shown to him and that he refused to sign.

MS. MOLINA: Objection to the form of the question, assuming facts not in evidence. Are you asking the witness to say that this document itself is a document

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that --

MR. PRESNELL: Stop, stop, stop. That's not an appropriate objection. You can object to the form of the question and --

MS. MOLINA: Object to the form of the question.

MR. PRESNELL: Excuse me, I'm not finished. You can object to the form of the question and that's it.

MS. MOLINA: Object to the form of the question.

MR. PRESNELL: And I'm not going to tolerate any more speaking objections today.

Q. (By Mr. Presnell) So, let me start over, Mr. Peters. Have you reviewed this document, Exhibit 1?
A. I recall this one, but I don't recall this one. I may recall this one, but not this one.
Q. All right. And for the record, you recall seeing the document that's identified as number 111 at the bottom, correct?
A. Yes, sir.
Q. And it's titled Disciplinary Status Notice at the top?
A. Yes, sir.
Q. All right. And you do not recall seeing the document that's identified as 112?
A. I don't recall seeing that one.
Q. All right. You're not denying that document 112

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is the back of document 111, you just don't recall?
A. I don't recall.

MS. MOLINA: Object to the form of the question.

Q. (By Mr. Presnell): You don't recall?
A. I don't recall.

Q. All right. Thank you.

Mr. Peters, did you participate to any degree in the EEOC's responding to Defendants' Interrogatories in this case?

A. What do you mean by that?

Q. Okay. Let me show you. The EEOC responded to written questions that we sent to them. And I'm not saying you should have, I'm just asking you whether you did.

Let me show this to you. Have you ever seen that document?

A. Yes.

Q. Okay. You have seen it before?

A. Yes.

Q. When did you see it?

A. I can't recall when I've seen it.

Q. Did you help answer these questions?

A. As far as on the back, you mean? Or what questions?

MS. MOLINA: Object to the form of the question.

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Could you be more specific as to which question you're talking about?

Q. (By Mr. Presnell) I'm talking about any of them. Did you help answer any of them?

A. Yes.

Q. All of them? Some of them?

MS. MOLINA: Object to the form of the question. Go ahead.

A. I can't recall all of them or -- I mean, some of them, I guess.

Q. (By Mr. Presnell) But you helped to some degree in answering some of these questions?

MS. MOLINA: Object to the form of the question. Go ahead.

A. Yes.
Q. (By Mr. Presnell) Okay. Look at Interrogatory Number 6 for me. Did you read that?
A. Yes, sir.
Q. Essentially, I asked for the identification of employers with which you tried to gain employment after October 2001, right?
A. Yes, sir.
Q. Did you assist the EEOC in providing the answer to number 6?
A. You mean did I give them the paperwork of the --